

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. Supreme Court

Appeal from Georgetown County
Kristi Lea Harrington, Circuit Court Judge

CRAIG GEATHERS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-002398

APPENDIX

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STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS

COUNTY OF GEORGETOWN) 2010-GS-22-172, 173

State of South Carolina,)

Plaintiff,)

Transcript of Record

vs.)

Trial Transcript

Craig Geathers,)

June 21-23, 2010

Defendant.)

B E F O R E :

Honorable Benjamin H. Culbertson
Georgetown County Courthouse
Georgetown, South Carolina

A P P E A R A N C E S:

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Scott Hixson, Esquire
Attorneys for Plaintiff

Eric J. Fox, Esquire
Attorney for Defendant

Grace L. Hurley, CVR-CM
Circuit Court Reporter

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Georgetown County Circuit Court RANDOM STRIKE SHEET

JUDGE NAME : Culbertson, Benjamin H

TRIAL TYPE : Criminal

PANEL ID : 10GS22172&173

COURTROOM CTR

DESCRIPTION : STATE vs CRAIG GEATHERS

Sorted by: Random

Trial

NAME	JUROR NBR	RACE	SEX	ST/PL	DEF	CR	REMARKS
1 Holt, Whitney B	68	W	F	(✓)	(X)	()	
2 Bellamy, Robbie D	9	B	M	(✓)	(✓)	()	
3 Perry, Edward D	103	W	M	(✓)	(✓)	()	
4 Shamas, Kathleen C	123	W	F	(✓)	(✓)	()	
5 Canine, David W	16	W	M	(✓)	(X)	()	
6 Flagg, Barbara A	43	W	F	(✓)	(✓)	()	
7 Nicholson, Debra K	98	W	F	(✓)	(✓)	()	
8 Goudes, Athanasios N	54	W	M	(✓)	(X)	()	
9 Port, Jane H	106	W	F	(✓)	(X)	()	
10 Gaither, Thomas K JR	50	W	M	(✓)	(✓)	()	
11 Plautz, Charlotte L	104	W	F	(✓)	(✓)	()	
12 Dase, Marcia A	30	B	F	(✓)	(✓)	()	
13 Hawkins, Angela	62	B	F	(✓)	(✓)	()	
14 Mincey, Jennifer W	89	W	F	(✓)	(X)	()	
15 McGeorge, Kenneth C	88	W	M	(✓)	(✓)	()	
16 Watford, Amy W	146	W	F	(✓)	(X)	()	
17 Gentry, Barbara L	51	W	F	(✓)	(X)	()	
18 Richard, Renee D	112	B	F	(X)	()	()	
19 Justice, Deanna M	73	W	F	(✓)	(✓)	()	
20 Tucker, L'quentin Omega	138	B	M	(X)	()	()	
21 Marshall, Richard H	83	W	M	(✓)	(X)	()	
22 Cribb, Edith Amanda C	27	W	F	(✓)	(X)	()	
23 Frierson, Ebony T	47	B	F	(✓)	(X)	()	
24 Tatcher, Donna A	132	W	F	(✓)	(✓)	()	

Georgetown County Circuit Court RANDOM STRIKE SHEET

JUDGE NAME : Culbertson, Benjamin H

TRIAL TYPE : Criminal

PANEL ID : 10GS22172&173

COURTROOM CTR

DESCRIPTION : STATE vs CRAIG GEATHERS

Sorted by: Random

Trial

NAME	JUROR NUMBER	RACE	SEX	STATE	PLIFF	DEF	CR	REMARKS
25 Davis, Jean M	32	B	F	()	()	()	()	
26 Gray, Peggy A	56	W	F	()	()	()	()	
27 Moore, Brian L	91	W	M	()	()	()	()	
28 Hobbs, Teresa R	66	W	F	()	()	()	()	
29 Horton, James R	70	W	M	()	()	()	()	
30 Smith, Dotherine D	126	B	F	()	()	()	()	
31 Florio, Laura L	44	W	F	()	()	()	()	
32 Walker, Kriscilla M	141	B	F	()	()	()	()	
33 Ofendo, Reyes Nancy L	99	A	F	()	()	()	()	
34 Thompson, Beverly H	135	B	F	()	()	()	()	
35 Rodenbeck, Todd M	118	W	M	()	()	()	()	
36 Young, Jonathan A	150	W	M	()	()	()	()	
37 Clark, Mary L	22	B	F	()	()	()	()	
38 Dozier, Pamela W	39	W	F	()	()	()	()	

Total Number of Jurors:

38

** END OF REPORT **

Voir Dire

1

1 (On the record, June 21, 2010. The following takes place
2 outside the presence of the jury panel.)

3 THE COURT: All right, what have we got?

4 MS. COTÉ: Thank you, Your Honor. We're here before
5 you on South Carolina versus Craig Geathers. These are
6 indictment, true-billed indictments, one for kidnapping and
7 one for armed robbery.

8 Excuse me, Your Honor, these indictments are indictment
9 numbers 2010-GS-22-172 for kidnapping and 2010-GS-22-173 for
10 armed robbery.

11 THE COURT: All right, anything before we bring the
12 jury in and pull the jury, anything preliminary?

13 MS. COTÉ: No, Your Honor.

14 THE COURT: As I understand we're just going to bring
15 the jury in, select a jury and then cut them loose till
16 tomorrow morning and take up some pretrial matters; is that
17 correct?

18 MS. COTÉ: That's correct.

19 THE COURT: Okay.

20 All right, let's go ahead and bring the jury panel in and
21 have them sit over here on this - my right, you all's left
22 side.

23 THE COURT: Ms. Coté, if you and Mr. Fox could come up
24 here for just a second. Really I think she can just answer my
25 question.

Voir Dire

2

1 MR. FOX: Okay.

2 THE COURT: It's just part of the voir dire
3 questioning.

4 (Whereupon, a bench conference is held.)

5 (The following takes place in the presence of the jury
6 panel.)

7 THE COURT: All right, we have everybody in?

8 Ladies and gentlemen, welcome back. I hope everyone had
9 a good lunch and we are getting ready to start the trial of
10 the case of the State of South Carolina versus Craig Geathers
11 Now, Mr. Geathers has been charged with kidnapping and armed
12 robbery, and before we start the trial of that case and the
13 jury selection I've got to go over some more questions with
14 you. These - you have all been qualified to serve as jurors
15 for this term of General Sessions Court. However, the next
16 series of questions that I have to go over with you are what's
17 commonly referred to as voir dire questioning. Voir dire
18 questioning are questions to determine whether or not you're
19 qualified to serve as jurors on this particular case and it
20 also gives the attorneys some additional information to assist
21 them in the jury selection process. So, as I told you at the
22 beginning this morning when I qualified you, jurors are
23 constantly taking oaths. So, I'll need everyone to please
24 stand and raise your right hand while the Clerk administers
25 the oath for the voir dire questioning.

Voir Dire

3

1 (Jury panel sworn by Clerk.)

2 THE COURT: All right, the first question as always,
3 is there any member of the jury panel who did not respond to
4 the oath by saying, "I do", please stand.

5 (No response.)

6 THE COURT: All right, good.

7 All right, ladies and gentlemen, as I said, this is the
8 case of the State of South Carolina versus Craig Geathers.

9 Mr. Geathers is charged with armed robbery and kidnapping,
10 which allegedly occurred on or about August the 5th, 2001.
11 Where, where did this allegedly occur, in city or where?

12 MS. COTÉ: In Georgetown County, Your Honor.

13 THE COURT: In Georgetown County, what section are we
14 talking about? Do you know?

15 MS. COTÉ: The Andrews section of Georgetown County.

16 THE COURT: All right, this allegedly occurred in the
17 Andrews Section of Georgetown County on or about August the 5th
18 of 2001. Is there any member of the jury panel who has heard
19 anything, read anything, knows anything or discussed anything
20 about this case? If so, please stand.

21 (No response.)

22 THE COURT: All right, as I said the Defendant in this
23 case is Craig Geathers. The alleged victim in this case is
24 Harold King.

25 Is there any member of the jury panel who is related by

Voir Dire

4

1 blood or marriage, has a business relationship, personal
2 relationship, social relationship or any other type of
3 relationship with either the Defendant, Craig Geathers, or the
4 alleged victim, Harold King? If so, please stand.

5 (No response.)

6 THE COURT: All right, I need you to listen carefully
7 because I'm getting ready to read the possible witnesses that
8 may appear in the trial of this case. These witnesses are
9 Michael Thacker of the Georgetown County Sheriff's Office;
10 James Heyward, of the Georgetown County Sheriff's Office;
11 Harold King; Jonathan Lambert, formerly of the Georgetown
12 County Sheriff's Office; Betty McCray; Craig Geathers; Irma
13 Scarborough; Bryant Vereen; and Ruby Allman.

14 Is there any member of the jury panel related by blood or
15 marriage, have a personal relationship, social relationship,
16 business relationship or any other type of relationship with
17 these potential witnesses? If so, please stand.

18 (No response.)

19 THE COURT: All right, the State in this case, the
20 State of South Carolina, is represented by Attorney Nancy Cote
21 of the 15th Circuit Solicitor's Office. The Defendant in this
22 case is represented by Eric Fox. Is there any member of the
23 jury panel related by blood or marriage, have a business
24 relationship, social relationship, personal relationship or
25 any other type of relationship with either Ms. Cote or Mr.

Voir Dire

5

1 Fox? If so, please stand.

2 (No response.)

3 THE COURT: Is there any member of the jury panel who
4 either personally or has a close family member employed with
5 the office of the 15th Circuit Solicitor's Office or with Mr.
6 Fox's office? If so, please stand.

7 (No response.)

8 THE COURT: Is there any member of the jury panel ever
9 been represented in any legal matter by Ms. Coté or Mr. Fox?
10 If so, please stand.

11 (No response.)

12 THE COURT: Is there any member of the jury panel ever
13 been involved in any type of legal action in which Ms. Coté or
14 Mr. Fox represented another party to that action? If so,
15 please stand.

16 (No response.)

17 THE COURT: Has any member of the jury panel formed or
18 expressed an opinion about any issue or matter involved in
19 this case? If so, please stand.

20 (No response.)

21 THE COURT: Is any member of the jury panel aware of
22 any bias or prejudice towards either the State of South
23 Carolina or the Defendant in this case? If so, please stand.

24 Yes, sir, your name and number?

25 MR. COLES: Juror 24, Jeromy Coles.

Voir Dire

6

1 THE COURT: All right, Mr. Coles, if you'd come
2 forward, please.

3 (Complies with request.)

4 (Whereupon, bench conference is held with juror.)

5 THE COURT: All right, Juror Number 24, Jeromy T.
6 Coles is excused from this case. Mr. Coles, you should have
7 been given a phone number. What you'll need to do is call
8 that number after six p.m. today for further directions as to
9 when you need to return; okay?

10 MR. COLES: Yes, sir.

11 THE COURT: All right, thank you very much.

12 MR. COLES: Thank you.

13 THE COURT: Any member of the grand jury - excuse me,
14 is there any member of the jury panel who was a member of the
15 grand jury that passed the indictments in this case? If so,
16 please stand.

17 (No response.)

18 THE COURT: Is there any member of the jury panel who
19 is a member of or a contributor to any group which has as its
20 primary concern the promotion of law enforcement or victims'
21 rights? Some of these, but not all of them, but some of these
22 organizations are Mothers Against Drunk Drivers, commonly
23 referred to as MADD; Students Against Drunk Drivers, commonly
24 referred to as SADD; Citizens Against Violent Crime, which
25 is also called CAVC; and Citizens Against Spousal Abuse or

Voir Dire

7

1 or commonly referred to as CASA. Is there any member of the
2 jury panel a contributor to or a member of any of these
3 organizations or similar type organizations? If so, please
4 stand.

5 (No response.)

6 THE COURT: Does any member of the jury panel know of
7 any reason whatsoever why he or she should not serve as a
8 juror in this case, with particular emphasis being placed on
9 your ability to be fair and impartial to both the State of
10 South Carolina and the Defendant in this case? If so, please
11 stand.

12 (No response.)

13 THE COURT: All right, any additional questioning from
14 the State?

15 MS. COTÉ: Nothing from the State, Your Honor.

16 THE COURT: Any from the Defense?

17 MR. FOX: Yes, Your Honor, if you would please
18 inquire whether any member of the jury panel has been the
19 victim of a crime or their family has been the victim of a
20 crime.

21 THE COURT: All right, is there any member of the jury
22 panel who either personally, has a family member or a close
23 personal friend that has ever been the victim of a violent
24 crime? If so, please stand.

25 MR. CANINE: Your Honor, my wife's ---

Voir Dire

8

1 THE COURT: All right, sir, first if you'd give me
2 your name and number?

3 MR. CANINE: David Canine, Juror 16.

4 THE COURT: All right, Mr. Canine, was this you or a
5 family member?

6 MR. CANINE: No, it was my wife's aunt and uncle.

7 THE COURT: All right.

8 How long ago was that?

9 MR. CANINE: About ten years ago.

10 THE COURT: Would that occurrence affect your ability
11 to be fair and impartial to both the State and the Defendant
12 in this case?

13 MR. CANINE: I don't think so.

14 THE COURT: Okay, and I appreciate your honesty in
15 saying you don't think so, but these attorneys have to be sure
16 that that event would not influence you in any way, shape or
17 form in this case and that you would be able to totally
18 disregard that incident and base your decision in this case
19 exclusively on the testimony and evidence in this case and I
20 need to know if you would be able to do that.

21 MR. CANINE: I would.

22 THE COURT: Okay, thank you for bringing that to our
23 attention, sir.

24 Yes, ma'am, your name and number?

25 MS. WATFORD: Amy Watford, 146. My brother was shot and

Voir Dire

9

1 killed 16 years ago in Andrews. Nothing was ever - no one was
2 ever convicted.

3 THE COURT: All right.

4 MS. WATFORD: We did go through a coroner's inquest but
5 we never went to trial.

6 THE COURT: Now, Ms. Watford, would that effect your -
7 that occurrence effect your ability to be fair and impartial
8 to both the State and the Defendant in this case?

9 MS. WATFORD: No, sir.

10 THE COURT: All right, would you be able to disregard
11 that event in its entirety and base your decision if you're
12 selected as a juror in this case exclusively on the testimony
13 and evidence in this case without any influence from any other
14 outside source? Would you be able to do that?

15 MS. WATFORD: Yes, sir, I would.

16 THE COURT: Thank you for bringing that to our
17 attention, Ms. Watford.

18 MS. WATFORD: It was like 16 years ago.

19 THE COURT: All right, thank you, ma'am, for bringing
20 that to our attention.

21 Anybody else who either personally, has a family member
22 or a close personal friend who is the victim of a violent
23 crime? If so, please stand.

24 (No response.)

25 THE COURT: Any additional questioning from the

Jury Selection

10

1 Defense?

2 MR. FOX: No, Your Honor.

3 THE COURT: Anything in response to that from the
4 State?

5 MS. COTÉ: No, Your Honor.

6 THE COURT: Okay.

7 (Clerk and Court confer.)

8 THE COURT: Ladies and gentlemen, what will happen now
9 those that have not been excused you are qualified to serve as
10 jurors in this particular case, and what will happen is names
11 are now fed back into a computer and they are spit out at
12 random. The Clerk of Court will call your name one at a time
13 depending on what order you appear on that list, and you'll
14 come forward and stand here in front of the court reporter and
15 face the attorneys and the State's attorney will look at you a
16 little while and then look back at her notes for a little
17 while and then look back at you a little while and then look
18 back at her notes for a little while and after a while she'll
19 decide if she wants you as a juror and if she does then the
20 Defense attorney will look at his notes for a little while and
21 then stare back at you a little while and then talk to his
22 client a little while and they'll go through this process over
23 and over until we get 12 jurors and an alternate juror. So,
24 when your name is called if you would please come forward and
25 bring with you any coats, umbrellas, pocketbooks, whatever

Jury Selection

11

1 else you might have with you when you come forward.

2 Now, if you are excused in this particular case please
3 don't take it personally. There's a lot of research and
4 demographics and things that go into jury selections. It just
5 means that if you're excused from this particular case then
6 whichever attorney is excusing you just does not feel that you
7 would fit what they're looking for as a juror in this
8 particular case. I've had many trials where an attorney will
9 strike a potential juror in one case and then select them in
10 the next case or select them in a case and then strike them
11 from the next one. So, there's really no rhyme or rationale
12 as to why certain jurors are selected and others are rejected,
13 but when your name is called if you would please come forward
14 and just stand in front of the court reporter here and face
15 the attorneys and we'll direct you further at that time.

16 All right, so, if I'm correct it's five strikes for the
17 State, ten for the Defense; correct?

18 MS. COTÉ: Yes, Your Honor.

19 MR. FOX: Yes, Your Honor.

20 THE COURT: All right.

21 THE CLERK: Juror Number 68, Whitney Holt.

22 THE COURT: Ms. Holt, if you'd just come stand right
23 here in front and face the attorneys.

24 THE CLERK: What says the State?

25 MS. COTÉ: Please present this juror.

Jury Selection

12

1 THE CLERK: What says the Defense?

2 MR. FOX: Please excuse this juror.

3 THE CLERK: You may return to your seat.

4 THE COURT: Thank you, ma'am.

5 THE CLERK: Juror Number 9, Robbie Bellamy.

6 What says the State?

7 MS. COTÉ: Please present this juror.

8 THE CLERK: What says the Defense?

9 MR. FOX: Please present this juror.

10 THE CLERK: Please take a seat in the jury box. Sir.

11 THE COURT: Sir.

12 MR. BELLAMY: Yes.

13 THE COURT: You need to come around over here.

14 THE CLERK: Juror Number 103, Edward Perry.

15 MR. FOX: Excuse me, Madam Clerk, what was that

16 number?

17 THE CLERK: 103.

18 MR. FOX: Thank you.

19 THE CLERK: What says the State?

20 MS. COTÉ: Please present this juror.

21 THE CLERK: What says the Defense?

22 MR. FOX: Please present this juror.

23 THE CLERK: Please take a seat in the jury box.

24 Juror Number 123, Kathleen Shamas.

25 THE COURT: Ma'am, how do you pronounce your name,

Jury Selection

13

1 Shamas?

2 MS. SHAMAS: I say Shamas.

3 THE COURT: Shamas.

4 THE CLERK: Shamas.

5 THE COURT: Okay, thank you, ma'am.

6 THE CLERK: What says the State?

7 MS. COTÉ: Please present this juror.

8 THE CLERK: What says the Defense?

9 MR. FOX: Please swear this juror.

10 THE CLERK: Please take a seat in the jury box.

11 Juror Number 16, David Canine.

12 What says the State?

13 MS. COTÉ: Please present this juror.

14 THE CLERK: What says the Defense?

15 MR. FOX: Please excuse this juror.

16 THE CLERK: You may return to your seat.

17 Juror Number 43, Barbara Flagg.

18 What says the State?

19 MS. COTÉ: Please present this juror.

20 THE CLERK: What says the Defense?

21 MR. FOX: Please seat this juror.

22 THE CLERK: Please take a seat in the jury box.

23 Juror Number 98, Debra Nicholson.

24 What says the State?

25 MS. COTÉ: Please present this juror.

Jury Selection

14

1 THE CLERK: What says the Defense?

2 MR. FOX: Please seat this juror.

3 THE CLERK: Please take a seat in the juror box.

4 Juror Number 54, Mr. Goudes.

5 THE COURT: You're going to have to pronounce that

6 name for me, too. How do you pronounce your first name?

7 MR. GOODES: Athanasios Goudes.

8 THE COURT: All right, Mr. Goudes.

9 THE CLERK: What says the State?

10 MS. COTÉ: Please present this juror.

11 THE CLERK: What says the Defense?

12 MR. FOX: Please excuse this juror.

13 THE CLERK: You may return to your seat.

14 Juror Number 106, Jane Port.

15 What says the State?

16 MS. COTÉ: Please present this juror.

17 THE CLERK: What says the Defense?

18 MR. FOX: Please excuse this juror.

19 THE CLERK: You may return to your seat.

20 Juror Number 5, Thomas Gaither, Jr.

21 What says the State?

22 MS. COTÉ: Please present this juror.

23 THE CLERK: What says the Defense?

24 MR. FOX: Please seat this juror.

25 THE CLERK: Please take a seat in the jury box.

Jury Selection

15

1 Juror Number 104, Charlotte Plautz.
2 What says the State?
3 MS. COTÉ: Please present this juror.
4 THE CLERK: What says the Defense?
5 MR. FOX: Please seat this juror.
6 THE CLERK: Please take a seat in the jury box.
7 Juror Number 30, Marcia Dase.
8 What says the State?
9 MS. COTÉ: Please present this juror.
10 THE CLERK: What says the Defense?
11 MR. FOX: Please seat the, please seat this juror.
12 THE CLERK: Please take a seat in the jury box.
13 Juror Number 62, Angela Hawkins.
14 What says the State?
15 MS. COTÉ: Please present this juror.
16 THE CLERK: What says the Defense?
17 MR. FOX: Please seat this juror.
18 THE CLERK: Please take a seat in the jury box.
19 Juror Number 89, Jennifer Mincey.
20 What says the State?
21 MS. COTÉ: Please present this juror.
22 THE CLERK: What says the Defense?
23 MR. FOX: Please excuse this juror.
24 THE CLERK: You may return to your seat.
25 Juror Number 88, Kenneth McGeorge.

Jury Selection

16

1 What says the State?

2 MS. COTÉ: Please present this juror.

3 THE CLERK: What says the Defense?

4 MR. FOX: Please seat the juror.

5 THE CLERK: Please take a seat in the jury box.

6 Juror Number 146, Amy Watford.

7 What says the State?

8 MS. COTÉ: Please present this juror.

9 THE CLERK: What says the Defense?

10 MR. FOX: Please excuse this juror.

11 THE CLERK: You may return to your seat.

12 Juror Number 51, Barbara Gentry.

13 What says the State?

14 MS. COTÉ: Please present this juror.

15 THE CLERK: What says the Defense?

16 MR. FOX: Please excuse the juror.

17 THE CLERK: You may return to your seat.

18 Juror Number 112, Renee Richard.

19 What says the State?

20 MS. COTÉ: Please excuse this juror.

21 THE CLERK: You may return to your seat.

22 Juror Number 73, Deanna Justice.

23 What says the State?

24 MS. COTÉ: Please present this juror.

25 THE CLERK: What says the Defense?

Jury Selection

17

1 MR. FOX: Please seat this juror.
2 THE CLERK: Take a seat in the jury box.
3 Juror Number 138, L'Quentin Tucker.
4 What says the State?
5 MS. COTÉ: Please excuse this juror.
6 THE CLERK: You may return to your seat.
7 Juror Number 83, Richard Marshall.
8 What says the State?
9 MS. COTÉ: Please present this juror.
10 THE CLERK: What says the Defense?
11 MR. FOX: Please excuse this juror.
12 THE CLERK: You may return to your seat.
13 Juror Number 27, Edith Amanda Cribb.
14 What says the State?
15 MS. COTÉ: Please present this juror.
16 THE CLERK: What says the Defense?
17 MR. FOX: One moment, Your Honor.
18 THE COURT: All right.
19 MR. FOX: Please excuse this juror.
20 THE CLERK: You may return to your seat.
21 Juror Number 47, Ebony Frierson.
22 What says the State?
23 MS. COTÉ: Please present this juror.
24 THE CLERK: What says the Defense?
25 MR. FOX: Please excuse this juror.

Jury Selection

18

1 THE CLERK: You may return to your seat.
2 Juror Number 132, Donna Thatcher.
3 What says the State?
4 MS. COTÉ: Please present this juror.
5 THE CLERK: Are there any challenges from the
6 Defense?
7 MR. FOX: None, Your Honor.
8 THE CLERK: Please take a seat in the jury box.
9 THE COURT: All right, you all say one alternate will
10 be sufficient?
11 MS. COTÉ: I believe so, Your Honor.
12 MR. FOX: Yes, Your Honor.
13 THE COURT: All right, so, that'll be one strike and
14 two strikes.
15 THE CLERK: Juror Number 32, Jean Davis.
16 What says the State?
17 MS. COTÉ: Please present this juror.
18 THE CLERK: What says the Defense?
19 MR. FOX: Please seat this juror.
20 THE CLERK: Please take a seat in the jury box.
21 THE COURT: All right, ladies and gentlemen, you are
22 the jury that will be presiding over this first case. I have
23 some matters I need to take up with the attorneys as well as
24 discuss some other matters with the remaining jury panel. So,
25 at this point in time I'm going to excuse you back to the jury

Jury Selection

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1 room, let you stretch your legs, get something to drink, see
2 where you will be presiding during the course of this trial.
3 When you get back to the jury room just get to know each
4 other. Please do not discuss this case. You haven't received
5 any evidence in this case. It's too early to begin
6 deliberations and I'll bring you back out very, very shortly
7 to give you some opening instructions or guidelines that we'll
8 go by but for right now I need to check with the attorneys to
9 see if there's any legal matters they need to address before
10 we cut the rest of the jury panel loose. So, I'll excuse you
11 back to the jury room for just a few minutes and we'll bring
12 you out very shortly. Okay? Thank you very much. Everybody
13 else please remain seated while the jury is excused.

14 (Whereupon, the following takes place outside the
15 presence of the jury.)

16 THE COURT: All right, any challenges to the selection
17 or composition of the jury by the State?

18 MS. COTÉ: Nothing from the State, Your Honor.

19 THE COURT: Any from the Defense?

20 MR. FOX: No, Your Honor.

21 (Remaining jury panel excused with call-in instructions.)

22 THE COURT: All right, I'm assuming we'll wait and
23 swear the jury tomorrow morning, is that how we want to do it
24 because I understand you all have got some pretrial matters
25 you all need to address at this time?

Jury Selection

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1 MS. COTÉ: Yes, Your Honor.

2 THE COURT: All right. Is that your understanding,
3 Mr. Fox?

4 MR. FOX: It is, Your Honor.

5 THE COURT: Okay, all right, let's - what I'm going to
6 do is probably go ahead and bring the jury back in, turn them
7 loose until tomorrow morning. I'd like to go ahead and get
8 started. I'll probably take the bench at 9:30. So, I'm going
9 to probably have them show up at 9:15 so that I can take the
10 bench at 9:30 and we'll get started in the trial of this case
11 then. I'll start with my opening instructions and then you
12 can do your opening arguments or statements to the Court.

13 Anything before we turn the jury loose for the evening?

14 MS. COTÉ: No, Your Honor.

15 THE COURT: Anything from the Defense?

16 MR. FOX: No, Your Honor.

17 THE COURT: All right, let's go ahead and bring the
18 jury back in.

19 (Whereupon, the following takes place in the presence of
20 the jury.)

21 THE COURT: All right, ladies and gentlemen, welcome
22 back. We have some pretrial matters that we need to take up.
23 So, I'm getting ready to turn you loose for the remainder of
24 the day and we'll start the trial of this case tomorrow
25 morning. However, before I excuse you I wanted to go over

Instructions by Court

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1 some preliminary things with you. First of all I just wanted
2 to introduce you to some of the court personnel and who you'll
3 be working with during the course of this trial.

4 (Court personnel introduced by Court.)

5 THE COURT: Now, I'm getting ready to excuse you for
6 the remainder of the evening, but when you go home this
7 evening and tonight please don't discuss the case. Don't talk
8 to anybody about it. Don't even discuss it among yourselves
9 and don't discuss it among any family members. Your decision
10 as jurors is to be based exclusively upon the evidence and
11 testimony presented in the trial of this case and you're not
12 even to begin your deliberations in this case until you have
13 been presented with all of the evidence to be presented. So,
14 I will tell you not to deliberate this case even once we get
15 started until I have directed you to do so. When you go home
16 for the evening please do not conduct any independent
17 investigations, don't go onto the internet looking for any
18 information, don't look in any newspaper accounts, try to find
19 out anything about the case. If you would do that for us we
20 would appreciate it.

21 Now, if you would please be back in the jury room
22 tomorrow morning at 9:15. We'll try - we'll have some coffee
23 for you, maybe some doughnuts or something for you to eat and
24 we'll try to get started soon thereafter, but when you get in
25 the jury room at 9:15 if you could do me one favor and that

Instructions by Court

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1 would be to select a foreperson.

2 Now, a foreperson has absolutely no more authority than
3 any other juror. A foreperson is simply the liaison between
4 the Court and the jury. If the jury has a need, the
5 foreperson lets the Court know. If the jury has a question,
6 the foreperson lets the Court know, and when it's time to
7 deliberate, the foreperson will preside over the
8 deliberations, but other than that the foreperson has no more
9 authority or influence or importance than any other juror.
10 So, if you can't select a foreperson don't worry about it. I
11 can appoint someone. Many judges appoint the foreperson for
12 their jury. I like to give the jury the opportunity to select
13 on their own if they're able to do so, and if you can please
14 do that. Just write the foreperson's name on a sheet of
15 paper, their jury number and then present it to the Court, but
16 if you can't select anyone don't worry about it. We'll take
17 care of that.

18 Now, when you come back into the courtroom, the
19 foreperson will always occupy this first seat closest to the
20 witness. The alternate will always sit in the seat where you
21 now sit in one of the alternate seats, that is Ms. Davis. If
22 you'd always sit in that seat. The rest of you are at
23 liberty to sit in whichever seat you'd like. You can sit in
24 the same seat throughout the trial of the case, you can
25 alternate seats during the trial of the case, whatever makes

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1 you feel more comfortable. The only requirement is that the
2 foreperson sits in the first seat closest to the witness and
3 the judge and the alternate always sits in one of the
4 alternate seats, but other than that I'm going to excuse you
5 for the remainder of the evening. I ask that you be back at
6 9:15. I'll give you some opening instructions at that point
7 in time and then we'll start the trial of the case. I hope
8 everyone has a good evening and we'll see you tomorrow morning
9 at 9:15. Thank you very much. Everybody else please remain
10 seated while the jury is excused.

11 JUROR: That way?

12 THE COURT: Yeah, if you'd come back through this way,
13 follow.

14 JUROR: I'm sorry.

15 THE COURT: That's fine.

16 (Whereupon, the following takes place outside the
17 presence of the jury.)

18 THE COURT: All right, Ms. Coté, anything preliminary
19 before we break for the day?

20 MS. COTÉ: No, Your Honor, there are no pretrial
21 motions from the State. I assume we'll discuss the
22 Defendant's prior record before he - if he decides to testify,
23 we will address that at that time.

24 THE COURT: However you all want to do it. Do we want
25 to do that now, Mr. Fox, just to put him on notice as to what

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1 might be out there or when do we want to do that?

2 MR. FOX: Well, we might as well do it now, Your
3 Honor, and then we'll know tomorrow or Wednesday when we get
4 to that point in the trial and we'll already be on the same
5 page.

6 THE COURT: All right, Ms. Coté, do you have that
7 information now?

8 MS. COTÉ: Yes, Your Honor.

9 He has a 2001 malicious injury to property, - and that's
10 his only South Carolina record. Then in 2004, he has an
11 attempted bribery of a public servant and it carries zero to
12 four years. So, it's the State's position that that should be
13 allowed to come in.

14 THE COURT: Where is that from?

15 MS. COTÉ: New York, and then ---

16 THE COURT: And what is, what is the penalty?

17 MS. COTÉ: Zero to four years.

18 THE COURT: Do you know what he got for that?

19 MS. COTÉ: Four days.

20 THE COURT: Okay, all right, what else?

21 MS. COTÉ: And then on February 13th, 2009, he pled
22 guilty to a petit larceny.

23 THE COURT: Where was that?

24 MS. COTÉ: Also in New York, the remainder of his
25 record is in New York.

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1 THE COURT: All right, what is the penalty for petit
2 larceny in New York?

3 MS. COTÉ: I believe it carries under a year, Your
4 Honor, but the State would seek to introduce it as a crime
5 involving dishonesty or a false statement.

6 THE COURT: All right, all right, anything else?

7 MS. COTÉ: Yes, sir, he also has another petit
8 larceny conviction on January 14th, 2009, another petit larceny
9 conviction on December 10th, 2008, I'm sorry, these appear to
10 be out of order, but I am going in the order that they appear
11 on his NCIC.

12 THE COURT: That's fine.

13 MS. COTÉ: Another petit larceny that he was
14 sentenced on December 22nd, 2008.

15 THE COURT: Now, that is different than the December
16 10th?

17 MS. COTÉ: Yes, Your Honor.

18 THE COURT: Okay.

19 MS. COTÉ: They show different arrest dates, one is
20 on December 9th, 2008, and the other is December 11th, 2008.
21 He has another petit larceny conviction February 13th, 2009.

22 THE COURT: All right, you've already told me that
23 one.

24 MS. COTÉ: Oh, I apologize.

25 THE COURT: That's fine, yeah.

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1 MS. COTÉ: March 8th, 2009?

2 THE COURT: A petit larceny?

3 MS. COTÉ: Yes, sir. May 12th, 2009, petit larceny,
4 and it appears he pled to two on that date, there were two
5 separate incident dates. Another petit larceny sentenced on
6 June 30th, 2009, it occurred on May 30th, 2009, and I believe
7 that's the extent of his record.

8 THE COURT: All right, so, I have got one, two,
9 three, four, five, six, seven, eight petit larcenies from
10 December 10th, 2008, through June 30th, 2009, a malicious
11 injury to property in 2001 and an attempted bribery of a
12 public servant in 2004.

13 MS. COTÉ: That's correct, Your Honor.

14 THE COURT: All right, all right, Mr. Fox, do you
15 want to put any challenges on the record now or do we want to
16 wait and do that at a later time?

17 MR. FOX: We'll wait. I'll confer ---

18 THE COURT: Okay.

19 MR. FOX: --- in more detail with Mr. Geathers
20 about those, Your Honor.

21 THE COURT: Okay.

22 MR. FOX: But I'm on notice about which ones the
23 State intends to ---

24 THE COURT: Yeah.

25 MR. FOX: --- try to impeach him with, if he does

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1 testify.

2 THE COURT: All right, anything else from the State?

3 MS. COTÉ: Nothing, Your Honor.

4 THE COURT: All right, anything from the Defense?

5 MR. FOX: Yes, Your Honor. I have a couple of
6 motions. The first would be there is a - was a photographic
7 array in this case that was prepared and shown to Mr. King,
8 the victim in this case, and I would object to that and to the
9 way that it was prepared and presented that it was done in
10 such a way that was unduly suggestive, unnecessarily
11 suggestive and created a substantial likelihood that there was
12 a misidentification; and so, we would object to that under, I
13 believe we need to have a Neil vs. Biggers here, United States
14 Supreme Court, Neil vs. Biggers and also State vs. Denson,
15 State of South Carolina vs. Denson and State vs. Taylor. I
16 have those sites if Your Honor needs those and copies of those
17 cases. So, that would be our first motion, Your Honor.

18 THE COURT: All right, let me hear from you on that,
19 Ms. Coté.

20 MS. COTÉ: Your Honor, we're prepared to go forward
21 on a Neil vs. Biggers hearing. The State's position is that
22 the lineup was not unduly suggestive and when examined under a
23 totality of the circumstances, a review, it should be admitted
24 into evidence. I do have the victim, Harold King, as well as
25 the investigating officer, Jonathan Lambert, here to, prepared

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1 to testify.

2 THE COURT: All right, let's go ahead and do that
3 then.

4 MS. COTÉ: Thank you, Your Honor.

5 The State calls Harold King.

6 WHEREUPON, Harold King was called to the stand, duly
7 sworn by the Clerk and testified as follows:

8 THE CLERK: Please be seated and state your name for
9 the record please.

10 MR. KING: My name is Harold Jerome King.

11 EXAMINATION

12 BY MS. COTÉ:

13 Q Mr. King, have you ever testified in court before?

14 A Yes.

15 Q Have you ever been a witness to or a victim of a crime
16 before?

17 A Yes.

18 Q How far did you go in school?

19 A I graduated from high school.

20 Q Will you please tell the judge how you came into contact
21 with the Defendant in this case?

22 A I was driving a cab and he was a fare that I picked up.

23 Q How long was he in your car?

24 A From 11:30 that Saturday night until about four or five
25 Sunday morning.

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1 Q What was your state of mind during the time of the
2 incident?

3 A I was scared.

4 Q Did you have any drugs or alcohol in your system at the
5 time?

6 A No, ma'am, I was at work.

7 Q What were the lighting conditions when you were able to
8 see the Defendant?

9 A I had a light in the cab and where I picked him up from
10 it was lighted.

11 Q And what was the distance between you and the Defendant
12 when you first went to pick him up?

13 A About five feet.

14 Q And then in your cab?

15 A It's like right there, you know, the back seat.

16 Q And did you have any other opportunities to view him
17 outside of your car?

18 A No, but when I got out of the cab at a - on a call at a
19 gas station and I was parked in the light I could also see him
20 then.

21 Q Do you have any problem seeing? Do you have to wear
22 contacts or glasses?

23 A No.

24 Q How did you first report this incident occurred?

25 A Somebody, well, on the side of the road where I was left.

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1 Q And did police report to the scene at that time?

2 A Yes.

3 Q So, it was right after it happened?

4 A Right, yes.

5 Q Who did you discuss the incident with at that time?

6 A With, with an officer, I don't remember the name right at
7 the moment.

8 Q Okay, did you give him a written statement?

9 A Yes, I did.

10 Q Do you remember what initial description you gave that
11 officer of the Defendant?

12 A Yes, yes.

13 Q Will you tell the Court what that was?

14 A It was a black male about six foot tall, light-skinned,
15 glasses.

16 Q Did he have any distinguishing features that made you -
17 helped you remember what he looked like?

18 A Glasses.

19 Q Was he holding a weapon?

20 A Yes, he was.

21 Q What hand was he holding that weapon in?

22 A In his right hand.

23 Q Had you ever seen him before?

24 A Never before that night.

25 Q Did you, did you have an opportunity to make an

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1 identification of this Defendant?

2 A Yes.

3 Q How was that done?

4 A In a picture lineup.

5 Q Did the police say anything to you before the procedure
6 was done?

7 A No, all they asked me - they said was they were going to
8 give me some pictures to look at and asked me if I recognize
9 them to put my initials on it.

10 Q Do you remember how long after the incident occurred that
11 you did that lineup?

12 A The next day.

13 Q Who was present there when you did it?

14 A It was the investigator sitting right there and another
15 lady that was with him.

16 Q Okay, did they ever suggest to you in any way who to
17 choose - whose picture to choose?

18 A No, they didn't have to.

19 Q Did, did you ever hear anybody identify that picture that
20 you choose before you chose it?

21 A No.

22 Q Did you identify the Defendant in this case, Craig
23 Geathers, as the suspect?

24 A Yes, I did.

25 Q How long did it take you to pick out that Defendant?

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- 1 A A couple of minutes, a minute.
- 2 Q Was there any doubt in your mind that the person in the
3 picture that you chose was the same person that was in your
4 cab that night?
- 5 A No doubt.
- 6 Q Do you see the person who committed the crime in the
7 courtroom today?
- 8 A Yes, I do.
- 9 Q Will you please identify him?
- 10 A The Defendant.
- 11 Q Will you please describe what he's wearing?
- 12 A It's a gray shirt and glasses.
- 13 MS. COTÉ: Your Honor, may I approach the witness?
- 14 THE COURT: Yes, ma'am.
- 15 (Court's Exhibit Number One [Photo Lineup] appropriately
16 marked.)
- 17 MS. COTÉ:
- 18 Q I'm going to show you, Mr. King, what's been marked as
19 Court's Exhibit One. Do you recognize this?
- 20 A Yes.
- 21 Q Let me get that out for you. Is that what you were shown
22 that day ---
- 23 A Yes.
- 24 Q --- that you made that identification?
- 25 A Yes.

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1 Q Are those your initials?

2 A Yes, they are.

3 Q And is that your signature on the back?

4 A Yes, it is.

5 MS. COTÉ: Your Honor, I have nothing further from
6 this witness.

7 THE COURT: All right, Mr. Fox?

8 MR. FOX: Thank you.

9 EXAMINATION

10 BY MR. FOX:

11 Q Mr. King, when did this incident occur?

12 A I don't remember the exact date, but I know that it was
13 in - around 2001.

14 Q Around 2001, so, nine years ago?

15 A Approximately.

16 Q Okay, and when you were given this photo array ---

17 MR. FOX: May I approach, Your Honor?

18 THE COURT: Yes, sir.

19 BY MR. FOX:

20 Q This array you have identified, with your name written on.
21 the back ---

22 A Yes.

23 Q --- do you recall exactly what the officer told you
24 before he showed you this - these pictures?

25 A The only thing that they said was they were going to show

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1 me a picture lineup and if I recognized anybody in it to
2 initial it.

3 Q Okay, did he tell you that the person that was - that it
4 may - that the - these - there's a group of how many pictures
5 on here?

6 A Six.

7 Q Six pictures. Did the officer before he showed them to
8 you tell you that the suspect in the case may or may not be in
9 those?

10 A No.

11 Q He didn't tell you that?

12 A No.

13 Q Okay, and I've opened it up on the inside, is the actual
14 - this is a folder and when you open it up then there is
15 pictures of six individuals, stapled, on a sheet stapled to
16 the inside of the folder; is that correct?

17 A Correct.

18 Q Okay, does that sheet - this white sheet that I'm
19 pointing to does that appear to be the same way that it was
20 when you looked at it back in 2001?

21 A Yes.

22 Q Okay, what about any portion below that, do you recall
23 seeing any portion below?

24 A No.

25 Q Okay, and I'll let you see this again, do any of the

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1 individuals in this array have glasses?

2 A No.

3 MR. FOX: Thank you. That's all the questions I
4 have of this witness, Your Honor.

5 THE COURT: All right, anything on redirect?

6 MS. COTÉ: No, Your Honor.

7 THE COURT: All right, you may step down. Call your
8 next witness.

9 MS. COTÉ: Thanks, Your Honor, the State calls
10 Jonathan Lambert to the stand.

11 WHEREUPON, Jonathan Lambert was called to the stand, duly
12 sworn by the Clerk and testified as follows:

13 THE CLERK: Please be seated and state your name for
14 the record, please.

15 MR. LAMBERT: Jonathan Lambert.

16 EXAMINATION

17 BY MS. COTÉ:

18 Q Mr. Lambert, were you the lead investigating officer on
19 the case on Craig Geathers?

20 A Yes, ma'am.

21 Q Did you conduct a photo lineup identification with the
22 victim in this case?

23 A Yes, ma'am, I did.

24 Q How did you go about assembling that photo lineup?

25 A I got a photo lineup of presumed or done up for me by the

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1 City of North Charleston Police Department.

2 Q Why did you go to the City of North Charleston Police
3 Department?

4 A Through the investigation we had received a name, Mr.
5 Geathers, and that he had been arrested prior, maybe about a
6 month or so prior to the incident with Mr. King. So, I knew
7 they had a very recent photo of him.

8 Q And did you assist in the - in assembling that lineup?

9 A Yes, ma'am.

10 Q How long after the or when did you, when did you conduct
11 the photo lineup identification?

12 A The actual photo lineup was presented to Mr. King on
13 August the 9th, 2001.

14 Q And where did you go to do that?

15 A His home.

16 Q Who else was present?

17 A There were some people, Mr. King's family or friends were
18 in there. I don't think they were, you know, they were in the
19 apartment or the house there, but Craig Henry, our victim's
20 advocate at the time, was with me.

21 Q Were you the - were the other family members in the same
22 room?

23 A No, ma'am, I think they were like in the living room next
24 - we were in the kitchen if I remember correctly.

25 Q I'm going to show you what's been marked as Court's

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1 Exhibit One.

2 MS. COTÉ: Your Honor, may I approach the witness?

3 THE COURT: Yes, ma'am.

4 BY MS. COTÉ:

5 Q Is this the lineup that you showed to the Defendant on
6 that day and that you assembled?

7 A Yes, ma'am, it is.

8 Q What did you say to the witness, if anything, before
9 having him select a photo from the lineup?

10 A Before, anytime before we showed anybody a photo lineup
11 as just course of, you know, before you go through it, there
12 is a list of things on the back. One through five are
13 basically kind of directions to the police about how to
14 assemble the photo lineup and how you basically how you treat
15 your witnesses. Line six down here is a little paragraph that
16 I always read and I'd read it verbatim to the witness before I
17 show them the photo lineup.

18 Q Will you read that now?

19 A Sure, it says, "In a moment I am going to show you a
20 group of photographs. This group of photographs may or may
21 not contain a picture of the person who committed the crime
22 now being investigated. Keep in mind that hairstyles, beards
23 and moustaches may be easily changed. Also, photographs may
24 not always depict the true complexion of a person. It may be
25 lighter or darker than shown in the photo. Pay no attention

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1 to any markings or numbers that may appear on the photos or
2 any other differences in the type or style of the photographs.
3 When you have looked at all the photos tell me whether or not
4 you see the person who committed the crime and do not tell
5 other witnesses you have or have not identified anyone," and
6 then after I would do this I'd get the victim or the witness
7 to sign, you know, that we did it, date it, I signed it and
8 then I would present him with the, you know, then show him the
9 photo lineup.

10 Q And he - did he sign the back of that before you showed
11 him the actual pictures?

12 A Yes, ma'am.

13 Q And then at that point did you show him the actual photo
14 lineup?

15 A Yes, ma'am, then I turned over and showed him this
16 lineup.

17 Q Did you suggest to him in any way which picture he should
18 choose?

19 A No, ma'am.

20 Q Did he select a photo from that lineup?

21 A Yes, ma'am, he did.

22 Q Which one did he choose?

23 A He selected photo number two.

24 Q How long did it take him to pick out that particular
25 photo?

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1 A I'd say three or four seconds at the most.

2 Q Did he seem definitive in his answer?

3 A Yes, ma'am, and I even asked him again, you know, take
4 your time, be sure, because he had done it so quickly. I
5 said, you know, "Take your time, look over them real good,
6 see, you know, before you jump to any conclusions make sure
7 that's the right one." He was very definitive number two and
8 then that's when I asked him to initial whichever one he
9 selected and his initials under number two.

10 Q Thank you.

11 MS. COTÉ: Your Honor, I have nothing further from
12 this witness.

13 THE COURT: All right, Mr. Fox?

14 MR. FOX: Thank you.

15 EXAMINATION

16 BY MR. FOX:

17 Q Now, Mr. Lambert, if I understand correctly, you didn't
18 actually prepare that array; is that correct?

19 A No, sir, I did not.

20 Q Okay, do you know - have any first-hand knowledge of how
21 that array was prepared by the North Charleston Police?

22 A Yes, sir, they have a - I guess it's a computer program
23 they had where they were able to look up, pull up mug shots
24 and I just, you know, I kind of point and drag and, I mean, I
25 would - that was all, we would go through the lineup and the

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1 officer down there, you know, she was going through it and I'd
2 say, "Okay, let's put this guy in the lineup, let's put that
3 guy in the lineup," and it was just kind of basically a point
4 and drag, you know, series of things and then it printed up
5 the lineup.

6 Q All right, and in fact, all six of those photos are mug
7 shots; are they not?

8 A Yes, sir, they are.

9 Q Okay, and on that sheet that's inside the folder, on the
10 white sheet that's stapled to the inside ---

11 A Yes, sir.

12 Q --- folded up underneath, in fact it lists the names and
13 some information about the different individuals in the
14 pictures?

15 A There's only one name.

16 Q That doesn't list all six of their names?

17 A No, sir. The original photo lineup that's how - and
18 that's how it was presented, just like that.

19 Q But it does indicate, you're correct, it does indicate a
20 date on each, and in fact, it says after name in parenthesis
21 mug shot; doesn't it?

22 A Yes, sir, yes, sir, it does say name and then mug shot
23 behind each.

24 Q But there is only actually one individual that ---

25 A There is only one individual named that's not Mr.

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1 Geathers there.

2 Q Were any of those other individuals that you know of
3 passengers in Mr. King's cab the evening he says he was
4 robbed?

5 A No, sir.

6 Q Okay, so, they were taken out of - were all those from
7 North Charleston, all North Charleston residents?

8 A Yes, sir. Yes, sir, they all came from ---

9 Q Okay, so, so, they were taken out of ---

10 A All from North Charleston's database, yes, sir.

11 Q Excuse me, okay, all recent, all recently arrested, all
12 mug shots; correct?

13 A Yes, sir, I guess so.

14 Q Okay.

15 MR. FOX: One moment, Your Honor.

16 THE COURT: All right.

17 BY MR. FOX:

18 Q Was Mr. King, were these the only photographs he was
19 shown in connection with this identification?

20 A Yes, sir, this is the only lineup he was shown.

21 Q Okay, and no other witnesses involved that made any
22 identifications before or after this one; were there?

23 A No, sir.

24 Q Okay, did he - did Mr. - you indicated in the length of
25 time it took Mr. King to make his selection, did he make any

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1 statements or comments at the time that he made his selection?

2 A Other than he said, "That's the guy."

3 Q Any other kind of reaction from Mr. King?

4 A No, sir.

5 Q Okay, was Mr. - you've indicated that you read the
6 statement that's on the back of that folder ---

7 A Yes, sir.

8 Q --- prior to showing the photographs to Mr. King. Did
9 you indicate whether in general there was a suspect, not
10 whether there was a suspect that may or may not be in that
11 lineup, but in preparing to discuss this with Mr. King, did
12 you indicate that there was a suspect in custody or someone
13 that you all were looking for at the time?

14 A I can't recall if I did or not, Mr. Fox.

15 Q Okay.

16 MR. FOX: Thank you, Your Honor, that's all the
17 questions I have of Mr. Lambert.

18 THE COURT: All right, redirect?

19 MS. COTÉ: Briefly.

20 MR. FOX: One moment, Your Honor.

21 THE COURT: Hold for one second. All right, Ms.
22 Coté.

23 MR. FOX: Your Honor, I do have one more based on

24 ---

25 THE COURT: All right, let's go ahead and get your

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1 question then.

2 MR. FOX: If I can - well, I think it's during -
3 pertinent on direct.

4 BY MR. FOX:

5 Q When you select those photographs in this program is
6 there any information other than date of arrest and name, when
7 you pull up the screen and it's got these different
8 individuals, does it have, for instance, height, weight, any
9 kind of race, those kind of characteristics?

10 A I can't remember, Mr. Fox, how exactly they were, if it
11 was a, you know, if it had a picture with a description of
12 offenses listed and all that or if it was just, just a mug
13 shot. You know, we're kind of like clicking it with the next
14 mug shot would come up. I can't recall how it was, how it was
15 doing.

16 Q Do you recall whether - is that - the photograph that's
17 in the array, is that the same photograph that would come up
18 on the computer screen or would the computer screen show for
19 instance maybe a whole torso shot and that be just a head shot
20 ---

21 A No, sir, I think that's all that showed up was just the
22 actual mug shot, you know, shoulder, shoulder to head mug
23 shot.

24 Q Okay, so, your decision was based on what you could see
25 of the head and shoulder and basically ---

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1 A Right.

2 Q --- and not ---

3 A Right.

4 Q Was there any influence or any determination based on
5 height, weight, race, anything of that nature?

6 A Other than just race.

7 Q In terms of selecting those pictures?

8 A Other than race, that's it. No, just, you know, black
9 males was all I was looking for.

10 Q Thank you, Your Honor, that's all.

11 THE COURT: All right, Ms. Coté?

12 REEXAMINATION

13 BY MS. COTÉ:

14 Q Did you have a description of the suspect that you relied
15 on when constructing this lineup?

16 A Yes, ma'am.

17 Q And did you structure that lineup based on that
18 description?

19 A To the point we could do it in a photo lineup, yes,
20 ma'am.

21 Q And did you feel that those were similarly, similar in
22 appearance, black males in that lineup?

23 A Yes, ma'am.

24 Q Were the names that are folded up under the lineup sheet
25 that Mr. Fox pointed out, were those visible at all to the

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1 victim when he made that identification?

2 A No, ma'am, it was just like that. That's how it was
3 presented to him with it folded up under, he couldn't see
4 anything.

5 Q And you can't see through it in any way?

6 A No, ma'am, I can't, no.

7 Q And he picked - was he - did he pick out the Defendant
8 fairly quickly; is that correct?

9 A Yes, yes, ma'am, he did.

10 Q Okay.

11 MS. COTÉ: I'm done.

12 THE COURT: All right, you may step down. Call your
13 next witness.

14 MS. COTÉ: Nothing further from the State, Your
15 Honor.

16 THE COURT: All right, anything further from the
17 Defense?

18 MR. FOX: No, Your Honor, in terms of witnesses.

19 THE COURT: All right, let me, let me see the photo
20 lineup, take a look at it. Oh, there it is right there, thank
21 you, I'm sorry. All right, is this - this hasn't been entered
22 into anything has it? Just Court's, yeah, that's right. All
23 right, anything further from the State?

24 MS. COTÉ: No, Your Honor, just argument.

25 THE COURT: All right, anything from the Defense?

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1 MR. FOX: No, just argument, Your Honor.

2 THE COURT: All right, since you're challenging let
3 me hear from you first, Mr. Fox.

4 MR. FOX: Your Honor, I'd point the Court to State
5 v. Denson, which is a South Carolina Supreme Court case, found
6 at 237 S.E.2d 761, that states that where the mug shots should
7 not be used, should not be the basis of a photo lineup, unless
8 the State can demonstrate three things: one being the need to
9 introduce the photographs; the second, the photographs
10 themselves if they're shown to the jury must not imply the
11 Defendant has a prior criminal record; and third and finally
12 the manner of introduction at trial must be such that it does
13 not draw particular attention to the source or implications of
14 the photographs. It's uncontested these are, in fact, mug
15 shots and I would argue initially that the State has not met
16 the criteria to have that array introduced, Your Honor.

17 THE COURT: All right, Ms. Coté?

18 MS. COTÉ: Your Honor, I don't - the State's
19 position is that these based on those factors that Mr. Fox
20 stated, we do - this case hinges essentially on ID. So, the
21 State does have a need to introduce those photographs into
22 evidence. If you look at the lineup yourself, Your Honor,
23 they don't imply that the Defendant has a criminal record,
24 there is no date stamped across the bottom as if it's a
25 booking photograph, he's not in a jumpsuit, there's no - it's

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1 not evident that it's in the - it's taken at the jail, and we
2 would not introduce those in trial. We would not mention that
3 they're mug shots when we discuss the lineup at trial. Your
4 Honor, this, this lineup was not unduly suggestive. You heard
5 the investigator state that they were all similar in
6 appearance, black males, based on the description he had on
7 this Defendant. Under the totality of the circumstances,
8 evaluation of this, you heard the witness testify he had good
9 opportunity to view the subject at the time that the crime
10 occurred, he was riding around in his cab for several hours.
11 He paid a good bit of attention to this, to this man riding in
12 his cab, he was able to witness him outside in lighted
13 circumstances. He gave a fairly detailed description of this
14 Defendant to police and they also had a name to go with him
15 that they put in that lineup or that they came to use in
16 assembling that lineup. He was certain when he made the
17 identification in the lineup. He said that there was no doubt
18 in his mind and there was no length of time, two days is not a
19 substantial length of time between the original confrontation
20 and the identification was made. So, Your Honor, it's the
21 State's position that this identification lineup should be
22 admitted into evidence at trial.

23 THE COURT: All right, I'm going to allow it. I
24 think the burden is on the Defendant to show by a
25 preponderance of the evidence that the identification was

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1 impermissibly suggestive. I don't think that they've done
2 that. Likewise, I think the State has shown that it was a
3 reliable identification. So, I'm going to allow it. All
4 right.

5 MS. COTÉ: Thank you, Your Honor.

6 MR. FOX: Thank you, Your Honor.

7 THE COURT: Thank you.

8 MR. FOX: Our next motion, Your Honor, actually came
9 out of testimony in that, on that motion. Investigator
10 Lambert indicated during his testimony that he knew Mr.
11 Geathers had a recent arrest and this was why he contacted
12 North Charleston Police Department and asked for their
13 assistance in providing photographs for that array and I'd
14 simply like that not to be mentioned as unduly prejudicial to
15 Mr. Geathers.

16 THE COURT: Meaning during the identification, yeah.

17 MR. FOX: Yeah.

18 THE COURT: Let me hear from you on that, Ms. Coté.
19 You have any argument?

20 MS. COTÉ: Your Honor, we weren't planning on
21 getting into his prior arrest and I'll instruct Officer
22 Lambert on how to address that when we're questioned on it.
23 We'll - we won't mention that it was the result of a prior
24 arrest, of course, Your Honor.

25 THE COURT: Okay, I'm assuming that that arrest did

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1 not lead to any of these convictions that you're using?

2 MS. COTÉ: No, Your Honor, it's the malicious injury
3 to property arrest.

4 THE COURT: The one that he was convicted of in 2001?

5 MS. COTÉ: Yes, Your Honor, and it doesn't give an
6 amount on that. So, it's my understanding that he received a
7 30-day sentence, Your Honor. So, I believe that that is the
8 under one thousand malicious injury to personal property. So,
9 we can't get into that.

10 THE COURT: Okay, all right I'll grant the
11 Defendant's motion to suppress any reference to the arrest or
12 conviction for malicious injury to property in 2001.

13 MR. FOX: Your Honor, the next motion would be
14 regarding Mr. King's testimony and we would ask the Court to
15 direct that witness or the Solicitor not to get into any
16 comments that the Defendant may have made in his statement to
17 the police. Mr. King has said that Mr. Geathers during the
18 time that he was in his cab and driving from Charleston to
19 Georgetown County made statements, requested to be taken to a
20 former girlfriend's residence. Mr. Geathers did and along the
21 way indicated he wished to go there because he was mad at her,
22 she had left him and he was going to kill her. Mr. King's
23 statement does indicate they, in fact, went to Pineville in
24 Berkley County to - in fact it's Ms. McCray, Betty McCray
25 who's on the witness list to her residence, but that nothing

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1 happened there. There's no charges coming out of that. In
2 fact, Ms. McCray was not there. So, there was no incident on
3 that occasion, nothing happened, nothing occurred. It is not
4 - it would be our position that it's unduly prejudicial to Mr.
5 Geathers because the State does not need to introduce or have
6 that testimony in order to prove any of the elements of the
7 armed robbery or the kidnapping. They can do that without
8 those comments. The only purpose would be to show or portray
9 Mr. Geathers as a violent person. He makes enough comments
10 regarding Mr. King that would be admissible; and so, I would
11 suggest there's no probative value to it, but any that there
12 is would be greatly outweighed by the prejudicial effect to
13 Mr. Geathers. Again, it would not be - those comments would
14 not be necessary in any way for the State to establish any of
15 the elements of armed robbery or kidnapping. So, we would
16 simply ask the Court to direct the solicitor to instruct Mr.
17 King to stay away from those references.

18 THE COURT: So, the sole - you don't have any
19 authority other than the rule, what is it 403, that says you
20 weigh the probative value against the prejudicial effect?

21 MR. FOX: That's correct, Your Honor.

22 THE COURT: Okay, because it's not a statement to law
23 enforcement or anything of that nature.

24 MR. FOX: No, no, sir.

25 THE COURT: You're just talking about the

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1 conversation or the statements made by the Defendant to the
2 victim at the time ---

3 MR. FOX: That's correct.

4 THE COURT: --- the alleged crime was being
5 perpetrated?

6 MR. FOX: Well, yes, it is, but again, I don't
7 believe that it has any - this is, this case is going to be
8 almost entirely Mr. King and his identification and his
9 testimony about what occurred. There are no other witnesses,
10 no one else came along and no one else was involved in this
11 thing, at least directly. I know there are other witnesses
12 here to testify but they can prove the armed robbery without
13 those comments, they can prove the kidnapping without those
14 comments. Nothing happened when, in fact, he went to Ms.
15 McCray's residence, nothing occurred there, no incident was
16 there and no charges were ever filed in relation to that. So,
17 yeah, under 403, Your Honor, we would say that that's - number
18 one I would say it's not relevant and number two even if the
19 Court finds that it is relevant that its prejudicial effect
20 greatly outweighs any probative value because again it's
21 unnecessary for the State to prove its case.

22 THE COURT: All right, Ms. Coté?

23 MS. COTÉ: Your Honor, we do feel that it's relevant
24 in this case, it goes to the Defendant's state of mind at the
25 time this incident occurred when he pulled out a gun on the

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1 cab driver after he went to the ex-girlfriend's house. It
2 wasn't a statement made in violation of Miranda. It wasn't a
3 statement made or it wasn't a statement made to law
4 enforcement. It was just a statement made to this witness.
5 So, it's the State's position this should be able to come in.

6 THE COURT: Okay, all right. Yeah, I'm going to deny
7 your motion. I'm going to allow it. I think weighing them,
8 there is a probative value and if you say that they've got a
9 lot of other statements that they can use, I don't see where
10 it's as prejudicial as you claim that it is. So, I'm going to
11 allow it.

12 MR. FOX: If I may have just a moment, Your Honor,
13 to consult with Ms. Coté, I may or may not have one more
14 motion.

15 Your Honor, that would be all the motions at this time.

16 THE COURT: All right.

17 MR. FOX: And there may be others.

18 THE COURT: All right, and on these motions that you
19 just made, I'm just, I'm ruling on them preliminarily. You
20 still can object at the time.

21 MR. FOX: Yes, Your Honor.

22 THE COURT: If you want to, make sure they have laid
23 the proper foundation and things of that nature.

24 MR. FOX: Yes, sir.

25 THE COURT: All right, anything further before we

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1 adjourn for the evening?

2 MS. COTÉ: Nothing from the State, Your Honor.

3 MR. FOX: Nothing from the Defense, Your Honor.

4 THE COURT: All right, thank you very much. We'll
5 stand in recess until 9:30 tomorrow morning. Okay?

6 MS. COTÉ: Thank you, Your Honor.

7 THE COURT: Thank you.

8 OFF THE RECORD

9 (On the record, Tuesday, June 22, 2010. The following takes
10 place outside the presence of the jury.)

11 THE COURT: All right, anything before we bring the
12 jury in?

13 MS. COTÉ: Your Honor, as the victim, Harold King,
14 is going to testify today, I just wanted to clarify his prior
15 record before we go forward with Mr. Fox's cross examination
16 of him and clarify what prior convictions he's allowed to go
17 into. Your Honor, it's the State's position that he should
18 only be able to discuss his 2003 possession of cocaine, first
19 offense.

20 THE COURT: All right, so, he has a you said a 2000

21 ---

22 MS. COTÉ: A 2003 possession of cocaine.

23 THE COURT: What other record is there?

24 MS. COTÉ: There is a, there's a domestic violence
25 charge in 1991, simple assault in 1991, no driver's license in

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1 1993, possession of stolen goods in 1993 and that concludes
2 his record.

3 THE COURT: When was the assault?

4 MR. FOX: 1991, Your Honor.

5 MS. COTÉ: That's correct.

6 THE COURT: All right, Mr. Fox, let me hear from you
7 on that.

8 MR. FOX: All right, Your Honor, I would certainly
9 agree the 2003 simple possession of cocaine would be - that
10 carries more than a year and within, is a conviction within
11 the last ten years. I would argue that the 1993 possession of
12 stolen goods, which does carry more than a year, although the,
13 you know, the ten year timeframe is not an absolute, that's
14 within Your Honor's discretion, and I would argue that's a -
15 possession of stolen goods is a, is a crime of honesty or
16 dishonesty, would be relevant for impeachment purposes and I
17 would ask the Court to allow me to cross examine him on that,
18 and then I just need clarification on - he has an arrest 3-29-
19 2006, one in Lexington County for possession of a stolen
20 vehicle and one in Richland County for use of a vehicle
21 without permission. I was able to verify that the use of
22 vehicle without permission charge was nolle prossed. So, I
23 don't have a question about that.

24 THE COURT: Okay.

25 MR. FOX: I was unable to find a disposition for the

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1 possession of a stolen vehicle. I think that would be
2 impeachable, but the records in Lexington - the online records
3 anyway from Lexington County didn't show a disposition and I'd
4 be satisfied if Ms. Gunter has done that or if Mr. King
5 recollects what happened with that charge.

6 MS. COTÉ: All I have, Your Honor, is his NCIC
7 record and it shows no disposition. It just shows that
8 arrest.

9 THE COURT: All right, well, check with him, check
10 with him and see if there's a disposition on that one.

11 MS. COTÉ: He tells me no, Your Honor.

12 THE COURT: Does he - what happened to that charge?
13 Is it still pending or was it ---

14 (Ms. Coté and Mr. King confer.)

15 MS. COTÉ: He tells me he wasn't even arrested for
16 that, Your Honor.

17 MR. FOX: Then, Your Honor, I would say that is
18 consistent with - we were unable to find any record in
19 Lexington County with his name; and so, that - what the - what
20 he is saying is consistent with what our investigation show.
21 I just wanted to clarify that.

22 THE COURT: All right. All right, Ms. Coté', I'm
23 going to grant your motion partially. I'm going to allow them
24 to cross examine him as to the 2003 possession of cocaine,
25 that having - carrying a penalty of more than a year in prison

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1 and being less than ten years old. I also think the
2 possession of stolen goods shows dishonesty. So, I'm going to
3 allow the 1993, allow them to cross examine him on the 1993
4 conviction for possession of stolen goods. All right.

5 MS. COTÉ: Thank you, Your Honor.

6 MR. FOX: Thank you, Your Honor.

7 THE COURT: All right, anything else? As far as the
8 criminal domestic violence, the assault and the no driver's
9 license in his possession, I am granting your motion to
10 suppress any cross examination or any questioning on those
11 issues, unless he opens the door. Certainly if he opens the
12 door during his testimony then they can bring it up. All
13 right?

14 MS. COTÉ: Thank you, Your Honor.

15 THE COURT: All right, anything else further from the
16 State?

17 MS. COTÉ: No, Your Honor.

18 THE COURT: Let's check and see if they have selected
19 a foreperson. Yeah, they may have forgotten about it.

20 MR. FOX: Nothing from the Defense, Your Honor.

21 THE COURT: All right, all right, let me see the
22 attorneys up here for one second. I'm having her check to see
23 if they got the foreperson.

24 (Whereupon, a bench conference is held.)

25 THE COURT: All right, thank you sir. All right, the

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1 jury has selected Juror Number 50, Thomas K. Gaither, Jr., as
2 the foreperson. All right, I'm going to mark that as Court's
3 Exhibit Two.

4 (Court's Exhibit Number Two [Foreperson Selection]
5 appropriately marked.)

6 THE COURT: All right, anything from the State before
7 we bring the jury in?

8 MS. COTÉ: No, Your Honor.

9 THE COURT: Anything from the Defense?

10 MR. FOX: No, Your Honor.

11 THE COURT: All right, I think we're going to go
12 ahead and bring them in. I'll do my opening charges and then
13 we can go straight into opening statements, is that
14 agreeable?

15 MS. COTÉ: That's agreeable from the State.

16 MR. FOX: Yes, sir.

17 THE COURT: All right, let's go ahead and bring the
18 jury in.

19 (Whereupon, the following takes place in the presence of
20 the jury.)

21 THE COURT: Okay, that's fine.

22 All right, ladies and gentlemen, welcome back. I hope
23 everyone had a restful evening. I apologize for taking so
24 long to get you out here; however, I understand there was a
25 big car wreck on the highway and we had trouble getting some

Opening Instructions by Court

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1 people here, but everybody is here and those things happen
2 from time to time, but I hope everyone had a good evening.

3 We're getting ready to start the trial of this case. I
4 understand, Mr. Gaither, they've chosen you as the foreperson
5 and I thank you for serving in that capacity. If you'd always
6 occupy the seat where you now sit throughout the trial of this
7 case. Ms. Davis, as the alternate, if you'd always occupy
8 that seat, and as I told you yesterday the rest of you are at
9 liberty to sit wherever you'd like. You can sit in the same
10 seat throughout the trial of the case, alternate seats, just
11 whatever makes you feel more comfortable.

12 Now, as I told you at the outset, during qualifications
13 and during the voir dire yesterday, jurors are constantly
14 taking oaths and this is no exception. So, I'll need everyone
15 to please stand and raise your right hand while the clerk
16 administers the oath for you to serve as jurors on this
17 particular case.

18 (Whereupon, jury sworn by Clerk.)

19 THE COURT: All right, did anyone in the jury not
20 respond to the oath by saying, "I do"? Please let me know.

21 (No response.)

22 THE COURT: All right, good. Thank you very much.

23 Now, ladies and gentlemen, we are about to begin the trial of
24 the case of the State of South Carolina vs. Craig Geathers.

25 Now, before we begin this trial I want to tell you that this

Opening Instructions by Court

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1 trial probably will be different from what you might expect.
2 Many people do not have a chance to attend an actual court
3 session as you are doing now and may think from what they've
4 seen on television or in the movies or reading books that
5 trials are always full of high drama and intense action and
6 riveting circumstances and things of that nature. Now, while
7 that might be the case in this trial it probably won't be.
8 All things - we hope that you do find this to be an
9 educational experience for you; however, it is a fundamental
10 part of our democracy, these trials and it is a search for the
11 truth, more than a search for entertainment, and while you
12 might find this somewhat entertaining, as I said, the primary
13 focus of this trial is to find the truth in this occurrence.
14 Searching for the truth and making sure that justice is done
15 is often a slow, deliberate and repetitive process, the exact
16 opposite of what you may be accustomed to in watching
17 television, the movies or reading books and things of that
18 nature.

19 The attorneys appearing before you are advocates for the
20 parties they represent, but first and foremost, they're
21 officers of the court. They're sworn to uphold the integrity
22 and fairness of our judicial system and to help you in the
23 search for the truth. You should expect them to be
24 professional, competent and ethical in the representation of
25 their client's interests.

Opening Instructions by Court

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1 Now, what I will now say is intended to serve as an
2 introduction to the trial of this case. These remarks are not
3 a charge on the law in this case. I will instruct you on the
4 law applicable to this case at the end of the trial, before
5 you retire to consider your verdict. This is merely an
6 explanation of the procedure we will follow in the trial of
7 this case so that you can better understand what may be
8 happening and what is expected of you.

9 The Defendant is charged by an indictment filed with this
10 court with the crimes of kidnapping and armed robbery, the
11 elements of which I will explain to you at a later time. The
12 indictment is simply the charge by which the case is brought
13 into court and it is not in any sense evidence of the
14 allegations contained in the indictment. The Defendant has
15 pled not guilty to both of these indictments; therefore, the
16 State has the burden of proving each element of the
17 indictments beyond a reasonable doubt. It will be your duty,
18 ladies and gentlemen, to decide whether or not the State has
19 met that burden of proof. Your purpose as jurors is to find
20 and determine the facts of this case. You are the sole judge
21 of the facts of this case. If at anytime I make any comment
22 regarding the facts of this case, you must disregard my
23 comments. You are to determine the facts from the testimony
24 you hear and the other evidence introduced in court. It is up
25 to you to determine the inferences which you feel may be

Opening Instructions by Court

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1 properly drawn from that evidence. It is especially important
2 that you perform your duty of determining the facts diligently
3 and conscientiously because ordinarily there is no way to
4 correct an erroneous determination of the facts by a jury. On
5 the other hand and with equal emphasis the same law that makes
6 you the judge of the facts in this case makes me the judge of
7 the law. The law as given by the Court is the only law you
8 may consider. You must accept and follow the law as I give it
9 to you even though you may disagree with that law. Just as I
10 cannot tell you what the facts of this case are, you cannot
11 disagree with me about the law to be applied in this case.
12 Your job is to take the law as I give it to you and apply it
13 to the facts as you find those facts to be from the testimony
14 of the witnesses and any other evidence that is introduced.
15 After doing that you will render your verdict, a true and just
16 verdict under the solemn oath you just took as jurors. Now,
17 until I advise you to begin your deliberations you must not
18 discuss this case with anyone, including your fellow jurors.
19 You cannot discuss it with any friends, family members or
20 anyone involved in the case. After the case is submitted to
21 you, you must discuss it only in the jury room with your
22 fellow jurors. The attorneys and parties in this case have
23 been advised that they are not to talk to you at all. So, if
24 you see anyone involved in the case and they do not say hello
25 to you or speak to you, they're not being rude. They're just

Opening Instructions by Court

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1 following the instructions of the court.

2 Now, during the trial I ask that you not read or listen
3 to or watch any news accounts or reports about this case.
4 This includes anything that may be in the newspapers or on the
5 internet, on the radio or television. You must not consider
6 anything you may have read or heard about the case outside of
7 the courtroom, whether it is before the trial of this case or
8 during the trial of this case. It is important that you keep
9 an open mind and not decide any issue in the case until all of
10 the evidence has been presented, the parties have made their
11 closing arguments and I have instructed you on the law in the
12 case. It is your solemn responsibility to determine the guilt
13 or innocence of the Defendant and your verdict must be based
14 solely on the evidence as it is presented to you during the
15 trial of this case and on the law as I instruct you during and
16 at the close of the trial of this case.

17 Now, in just a moment the Solicitor will make what's
18 called an opening statement in which the Solicitor will
19 explain to you the issues in this case or at least what the
20 Solicitor thinks the issues in this case are. The attorney
21 for the Defendant may make an opening statement if he wishes
22 to, although he is not required to do so. What the attorneys
23 tell you during their opening statements is not evidence in
24 this case. It is simply their position as to what they think
25 the issues of this case are. The evidence in this case will

Opening Instructions by Court

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1 be presented to you by testimony of sworn witnesses from the
2 witness stand and any other exhibits that I find is admissible
3 in the trial of this case.

4 Now, in determining what the true facts are in this case
5 you must decide whether or not the testimony of the witnesses
6 is believable. It will be my responsibility to rule as a
7 matter of law as to whether certain testimony is admissible at
8 all or not, but once the testimony is admitted into evidence,
9 whether or not you believe it is solely for you to determine.
10 In deciding whether to believe a witness you have the right to
11 consider the interest of any witness, the bias of any witness,
12 the prejudice of any witness, the opportunity for the witness
13 to have seen and heard the matters about which the witness may
14 testify and the way the witness acts on the witness stand.
15 You have the right to consider anything that is in the record
16 that will help you evaluate the testimony of the witnesses.
17 That means that it is your duty to pay close attention to
18 these witnesses, to observe them, to listen to their
19 testimony and to pay close attention to the attorneys and to
20 the Court. Don't let your thoughts wander, but give strict
21 attention to the testimony in this case so at the end of all
22 the testimony, after the arguments of counsel and the charge
23 on the law by the Court you will then be in a position to
24 determine what the true facts of this case are and to apply
25 the law to those facts and thus render a just and true

Opening Statement by State

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1 verdict.

2 All right, any challenges or additions to the opening
3 charges by the State?

4 MS. COTÉ: None from the State, Your Honor.

5 THE COURT: Any by the Defense?

6 MR. FOX: None, Your Honor.

7 THE COURT: All right, ladies and gentlemen, at this
8 time we will begin with the opening statements from the
9 attorneys. As I told you this is not evidence at this time.
10 This is simply the attorney's account as to what they think
11 the issues of this case are. All right, Ms. Coté?

12 MS. COTÉ: Thank you, Your Honor, may it please the
13 Court?

14 THE COURT: Yes, ma'am.

15 MS. COTÉ: On August 5, 2001, the victim in this
16 case, Harold King, was at work. He was working as a cab
17 driver in the Charleston area and it had been a regular day at
18 the office for him. That regular day was turned upside down
19 when the Defendant in this case, Craig Geathers, got into his
20 taxi cab.

21 The Defendant got into his cab and asked to be taken to
22 the St. Stephen area which is located in Berkeley County.
23 They began their journey to St. Stephen and somewhere along
24 that trip the Defendant pulled out a gun and held it to the
25 back of the victim's head, told him he would kill him and

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1 urged him to drive faster.

2 They got to their destination in St. Stephen which was
3 the Defendant's ex-girlfriend's house. She wasn't home; and
4 so, the Defendant, still with that gun to the victim's head,
5 told him to keep driving. He had him drive into Georgetown
6 County, urging him to drive faster and faster, threatening him
7 to kill him.

8 When they got to Georgetown, the Defendant changed his
9 mind. He wanted to go back to where they started or go back
10 to the Charleston area. He still had that gun to the back of
11 the victim's head, still urging him to go faster and faster,
12 so fast that the victim lost control of his cab and wound up
13 crashing that cab into a ditch. The victim tried to get the
14 cab out of the ditch. He couldn't. The Defendant got out of
15 that car, still with that gun held to the victim's head and
16 demanded all of his money. He decided to use him as his own
17 personal ATM machine. He took that money and he left the
18 scene.

19 Now, ladies and gentlemen, that's just a brief overview
20 of the facts in this case. You'll hear much more detail from
21 this witness stand. You'll hear from a number of witnesses
22 today. You'll begin by hearing from some police officers who
23 work for the Georgetown County Sheriff's Office that worked on
24 this case. The first officer you'll hear from is Investigator
25 Michael Thacker, who was a road deputy at that time and who

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1 was one of the first officers to respond to the scene of that
2 taxi cab in the ditch on the side of the road.

3 You'll next hear from Investigator Jonathan Lambert, who
4 was the lead investigating officer assigned to this case.
5 He'll be able to tell you what investigation he did on this
6 case and what led him to this Defendant.

7 You'll hear from another officer with the Sheriff's
8 Office, Sergeant Heyward, who did some more recent follow-up
9 investigation on this case. You'll also hear from the only
10 other person in the cab on that night as it was speeding to
11 Georgetown County, the victim in this case, Harold King.

12 My name is Nancy Coté and I'm an Assistant Solicitor here
13 in Georgetown County. It's our office's job to prosecute all
14 crimes that occur in Georgetown County. The Defendant is here
15 charged with kidnapping and armed robbery. I ask you to leave
16 any images that you have in your mind that you've seen from
17 movies or TV shows about what a kidnapping is. In those
18 movies and TV shows you often see extreme circumstances where
19 somebody is bound with duct tape or rope, some a gag is put in
20 their mouth and they're often thrown in the trunk of a car and
21 taken to a remote location. The law in this state as Judge
22 Culbertson will instruct you on later does not require such
23 extreme circumstances. It requires a restriction on a
24 person's movement. It requires that the person feel as if he
25 is not free to leave. He is also charged with armed robbery

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1 which is pretty much what it sounds like, a person's personal
2 goods, personal items or money are taken from him or her while
3 they are being threatened, while a weapon is being held on
4 them and while they're being threatened. In this case that
5 weapon was a gun.

6 I ask for your attention during this trial. I ask that
7 you give all of these witnesses that will take the witness
8 stand your attention, and after all of the testimony and after
9 Judge Culbertson instructs you on the law of this case, I ask
10 that you render a verdict of guilty against this Defendant for
11 both charges, kidnapping and armed robbery. Thank you.

12 THE COURT: All right, Mr. Fox.

13 MR. FOX: Thank you, Your Honor, if it please the
14 Court?

15 THE COURT: Yes, sir.

16 MR. FOX: Good morning, ladies and gentlemen, my
17 name is Eric Fox. I'm here today as the attorney for Mr.
18 Craig Geathers, who's seated there at the table across the
19 courtroom. The Solicitor has given you a recitation of the
20 allegations in this case, the charges being armed robbery,
21 kidnapping, and she's given you a brief summary of what they
22 will try to prove to you. Needless to say we have a different
23 idea about what happened. I'm not going to discuss facts at
24 this point. The evidence, what's important will be the
25 testimony and the evidence that will come from the witness

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1 stand or any documents or anything else that may be produced,
2 introduced to you, and you, as a jury, will take those things
3 and then combine it with the law that the Judge will read to
4 you or give you at the end of the case.

5 I know on your list of a thousand things you wanted to be
6 doing on this summer day, jury duty didn't make the list, but
7 this is one of the most important obligations you have as a
8 citizen of this country along with military service and voting
9 in my mind. Not every country in the world obviously has jury
10 trials, even countries that we may think of as pretty
11 sophisticated democracies. In some countries in Europe a
12 panel of judges makes the decisions. We're one of the few
13 countries in the world that takes 12 ordinary citizens from
14 all walks of life and says, "We trust you to decide the most
15 important cases that need deciding." We don't need a panel of
16 experts, a bunch of lawyers; lawyers are important to the
17 process, but we trust the common sense and wisdom that you
18 collectively have. That's why you're here. That's a very
19 unique and very important obligation in our system.
20 Certainly, and I know all of you swore an oath to pay
21 attention, to follow the law the Judge gives you and to do
22 your duty. The Judge will instruct you at the end of the
23 trial what reasonable doubt is. If I say anything
24 inadvertently that is different than what the Judge instructs
25 you, it's not on purpose. A reasonable doubt, if I just asked

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1 you, what does your common sense tell you, you say, "Well,
2 it's a doubt you can attach a reason to." That's basically
3 it. Well, that's the burden that the State must satisfy all
4 12 of you with before you can render a verdict of guilty.
5 Reasonable doubt is the highest standard of proof in the law.
6 We are in the Court of General Sessions, criminal court. If
7 we were in Common Pleas or civil court, where people are
8 fussing about a contract or who's responsible for a car
9 accident, things of that nature, the burden of proof is what
10 we call a preponderance of the evidence. If you think of the
11 scales of justice in a civil case, one side simply needs to
12 tilt the scales ever so slightly in their favor to win.
13 That's not the case in criminal court. In criminal court,
14 beyond a reasonable doubt you have got to be satisfied about
15 as sure as you can be without having actually been there to
16 witness the events, that the Defendant, that Mr. Geathers is,
17 in fact, guilty. Obviously none of you were there, you can't
18 know with a hundred percent certainty. The law does not
19 require a hundred percent certainty, no question, but if you
20 have any doubt after hearing all of the evidence, after
21 hearing the Judge instruct you on the law, if you have any
22 doubt and it's a reasonable one, there was a judge in this
23 circuit, Judge Floyd used to say, "You can doubt whether
24 there's salt in the ocean off Myrtle Beach, but that's not
25 really a reasonable doubt." You can doubt whether the sun,

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1 whether the earth revolves around the sun, that's not
2 particularly a reasonable doubt, but if based on the evidence
3 you have here or lack of evidence that you have in the
4 courtroom when all is said and done and you're at the end of
5 the trial and you're back in your jury room deliberating if
6 you have a doubt you must return a verdict of not guilty. Not
7 guilty, understand, is not the same as innocent. I am sure
8 you are all aware South Carolina used to be an English colony
9 and an awful lot of our laws and procedures we inherited from
10 the English. We've changed a good bit, but one of the things
11 and one of those changes was in England, at least back when we
12 were a colony, in a criminal case there were three possible
13 verdicts. You had guilty, which is pretty obvious, and
14 understandably you had innocent, which is the Defendant, we
15 believe, did not do it at all and not guilty or not proven, in
16 other words, "We, the jury, find that the State did not carry
17 its burden of proof, they did not remove doubt and we do not
18 believe that it carried their burden of proof, and therefore,
19 although we don't know for sure if the man is innocent, we
20 think they have not proven their case." We have merged
21 innocent and not proven in this State to not guilty.

22 Now, I simply ask you to pay very careful attention, to
23 not make up your mind about anything in this case until you
24 have heard everything and until, including until you have
25 heard the charge from Judge Culbertson on the law and I think

Michael Thacker - Direct by State

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1 when you do that, when all is said and done, I'll be back here
2 at the end of the case to ask you to return a verdict of not
3 guilty. Thank you.

4 THE COURT: All right, ladies and gentlemen, we will
5 begin the testimony and evidentiary phase of this trial at
6 this point in time. Ms. Coté, you can call your first
7 witness.

8 MS. COTÉ: State calls Investigator Michael Thacker.

9 THE COURT: All right.

10 WHEREUPON, Michael Thacker was called to the stand, duly
11 sworn by the Clerk and testified as follows:

12 THE CLERK: Thank you, please be seated and state
13 your name for the record.

14 MR. THACKER: Michael Thacker.

15 DIRECT EXAMINATION

16 BY MS. COTÉ:

17 Q Investigator Thacker, where are you employed?

18 A Georgetown County Sheriff's Office.

19 Q How long have you worked there?

20 A Approximately ten years.

21 Q Were you employed there on August 5th, 2001?

22 A Yes.

23 Q What was your job title at that time?

24 A I was assigned to uniform patrol.

25 Q And what's your current job title?

Michael Thacker - Direct by State

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1 A I'm in investigations and crime scene.

2 Q Will you please discuss a little bit of background for
3 the jury, your law enforcement and training?

4 A Certainly, I completed the academy at, South Carolina
5 Criminal Justice Academy, spent approximately two years, 18
6 months working uniform patrol. During that time cases - I
7 worked in the Andrews area, promoted to Investigations
8 Division and also spent internship with South Carolina Law
9 Enforcement Division and probably around 650 hours of advanced
10 crime scene training.

11 Q Were you on duty on August 5, 2001?

12 A Yes.

13 Q Did you receive a call to respond to an incident location
14 that morning?

15 A I did.

16 Q Do you remember the nature of that call?

17 A It was a call - the highway patrol had responded to a
18 call for an automobile accident and they called our dispatch.
19 Once they arrived they were told by the person that he
20 actually had been ---

21 MR. FOX: Objection, that would be hearsay, Your
22 Honor.

23 A Well ---

24 THE COURT: I sustain.

25 A Okay, the information that was passed on from dispatch,

Michael Thacker - Direct by State

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1 they give us a phone call, we were at our patrol office, to
2 respond to a call from highway patrol that there was a - it
3 was not an automobile accident, but in fact, something that
4 would have been for us to handle, which would have been a, you
5 know, I guess a reported crime.

6 Q Was it something beyond just a wreck?

7 A Yes.

8 Q Where were you asked to respond to that morning?

9 A It was Highway 41, approximately two, three miles north
10 of the 17 Alternate, which is Saints Delight Road.

11 Q Is that location in Georgetown County?

12 A Correct.

13 Q What did you see when you responded to that location?

14 A The - there was a taxi cab in the ditch and highway
15 patrol vehicles were there and the person, the driver of the
16 taxi cab, was in the vehicle, in the highway patrol vehicle,
17 talking with them.

18 MS. COTÉ: Beg the Court's indulgence.

19 THE COURT: All right.

20 BY MS. COTÉ:

21 Q Investigator Thacker, I'm going to show you what's been
22 marked for identification as State's Exhibit One and Two.

23 A Okay.

24 Q Will you tell me if you recognize those photographs or
25 the images in those photographs?

Michael Thacker - Direct by State

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1 A Yes.

2 Q Are those an accurate depiction of how the crime scene
3 appeared when you arrived?

4 A Yes, ma'am.

5 Q Have they - has that been altered in any way? That's
6 how, that's how you viewed it?

7 A That's as I remember, yes, ma'am.

8 MS. COTÉ: Your Honor, the State would seek to
9 introduce these as State's Exhibits One and Two.

10 THE COURT: Any objection?

11 MR. FOX: No, Your Honor.

12 THE COURT: All right, State's Exhibits One and Two
13 admitted into evidence without objection.

14 (Whereupon, State's Exhibit Numbers One and Two
15 [Photographs] admitted into evidence and appropriately
16 marked.)

17 MS. COTÉ: Your Honor, may I publish these to the
18 jury at this time?

19 THE COURT: Yes.

20 BY MS. COTÉ:

21 Q On State's Exhibit One can you just describe for the jury
22 the angle where that was located, what direction the car was
23 facing?

24 A This picture here has the taxi in the ditch off the side
25 of Highway 41. It's pointing south on the northbound side of

Michael Thacker - Direct by State

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1 41.

2 Q And approximately how far off the road was that?

3 A I would say 10, 10, 15 feet maybe, right behind the back
4 side of - you can't see it in the view, but that's a curve
5 that's in the, in the roadway. The angle of that ditch you
6 can see it curve around, that's what that's from.

7 Q I'm going to show you State's Exhibit Two again. Is that
8 just a different view of the same car?

9 A That's correct.

10 Q Who all was at the scene when you arrived that morning?

11 A There was highway patrol, my sergeant at the time,
12 Sergeant Brad Cribb and a Tracey Milligan and there was a call
13 to Carol Murphy, who was an investigator at the time, to
14 process the vehicle.

15 Q Did you speak to the victim, Mr. King, that morning?

16 A I did.

17 Q Did you take a statement from him?

18 A I did. I spoke with him briefly initially to get
19 description and some general information and then he completed
20 a written statement and as well as told me, you know, told me
21 some information that I documented.

22 Q What type of description did you receive of the
23 Defendant?

24 A He had described him as having a - it was an orange shirt
25 with writing on it. I believe he told me Iowa and glasses,

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1 bumps on his face, light skin, probably six foot two,
2 approximately. I think there was also he had told me there
3 was a handkerchief or a small towel where he had with a
4 handgun and a hat and a backpack.

5 Q What else did you do - what if anything else did you do
6 to aid in the investigation of this case?

7 A We - there was reported that there was been driven
8 throughout some areas of Georgetown and had stopped at a store
9 at some point. So, I took Mr. King through routes from the
10 location where the vehicle was found through Andrews back
11 through Saints Delight Road, 521 back towards Georgetown, to
12 see if he could identify any of the stores where he had
13 reported that they had stopped at one point.

14 Q Was he able to identify the store?

15 A He did.

16 Q And what store was that?

17 A It was Gene Ward's Country Store, which is in Georgetown.

18 MS. COTÉ: I have nothing further from this witness,
19 Your Honor.

20 THE COURT: All right, Mr. Fox?

21 MR. FOX: Thank you, Your Honor.

22 CROSS EXAMINATION

23 BY MR. FOX:

24 Q Investigator, when you gave Mr. King the opportunity to -
25 when you spoke to Mr. King, the cab driver, and then gave him

Michael Thacker - Cross by Defense

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1 a chance to make a written statement; is that correct?

2 A That's correct.

3 Q Okay, and was he - did you tell him that was his
4 opportunity to put everything that he knew or observed about
5 this incident in written form?

6 A That was his opportunity - yes, sir, I told him to write
7 down at the time, you know, what he, what he could remember.

8 Q Okay.

9 A He was, you know, shaken up, in my opinion and there was
10 also going to be an investigator coming to speak with him
11 further.

12 Q Do you recall what time you arrived on the scene?

13 A I believe the call was approximately 9:50 a.m. and I
14 believe we arrived around 10:09 a.m.

15 Q Okay, and how long after - you know what time - well, let
16 me ask you this, the statement that Mr. King wrote, was that
17 done on the scene or back at the sheriff's office?

18 A I believe it was done there on the scene.

19 Q Okay, any rush about getting that done, any hurry?

20 A No hurry.

21 Q Okay, no ---

22 A Not, I mean, not as far as for him to write it. I was
23 just trying to get him to, you know, calm down and try to
24 recall some of the events while he had it fresh on his mind.

25 Q Okay, and while it was fresh in his mind and you gave him

Michael Thacker - Cross by Defense

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1 as much time as he needed to write out that statement?

2 A Yes, sir.

3 Q Okay, now, you've indicated that you drove with Mr. King
4 to different areas where he said this incident took place,
5 different places that he stopped or they drove past; is that
6 correct?

7 A I drove him some areas to see if he could identify to
8 remember the locations or any of the routes that were driven.

9 Q Are you the officer that went with Mr. King to the gas
10 station?

11 A We went to Gene Ward's store.

12 Q Okay.

13 A On that, on that same day, yes, sir.

14 Q Okay, so, you didn't go with him on another occasion did
15 you?

16 A No, sir.

17 Q Okay, did you or are you aware in the days after this,
18 during your investigation, did you have any information about
19 Mr. Geathers's residence, where he lived in Georgetown County?

20 A I did not. I didn't have any, any further involvement in
21 the case after that day.

22 Q Okay, any involvement at all or just not any
23 investigative involvement?

24 A I had, I had no further involvement. I was there on
25 uniform patrol. I had the duty of the initial report.

Michael Thacker - Cross by Defense

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1 Q Did you have contact that day with the taxi company in
2 North Charleston that Mr. King worked for?

3 A Yeah, myself and the sergeant at the time, we called to
4 see if they could fax some information over.

5 Q And did they fax information to you?

6 A Yes, sir.

7 Q And what was the nature of that information?

8 A It was to find out some of the calls, you know, where
9 they document their call list or their, I guess, their fares.

10 Q And that would be - that wasn't for all their drivers;
11 was it? It was just for Mr. King; wasn't it?

12 A I believe so, yes.

13 (Defense Exhibit Number One [Fax - North Area Taxi]
14 marked for identification.)

15 Q Okay, Investigator, I'm going to show you what's been
16 marked as Defense Exhibit for identification One. Take a look
17 at that and tell me if you recognize what that is.

18 A Okay, it looks like the fax that was received to Sergeant
19 Cribb.

20 Q Have you ever seen that before?

21 A Uh-huh, yes, sir.

22 Q Yes, sir, okay, and that's from who?

23 A This is from North Area Taxi.

24 Q Okay, and does it give dispatch times from North Area
25 Taxi to Mr. King on there?

Michael Thacker - Cross by Defense

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1 A It has taxi log for cab number 93, Harold King, August 4th
2 and 5th.

3 Q And what are the times indicated on that?

4 A It says 1:10 a.m., [REDACTED], Apartment [REDACTED] to
5 Otranto Road, I believe that's maybe ---

6 Q Any others?

7 A 1:54 a.m. Halftime, a bar, St. James Avenue to Super K-
8 Mart and 2:11 a.m. Fairwind Apartments, 14C to Pantry.

9 Q Is that the last log entry on that?

10 A And at the bottom it says last call on record.

11 Q And that was at 2:11 a.m.?

12 A 2:11 a.m., yes, sir.

13 Q Okay, and do you know are these addresses, Georgetown
14 addresses, do you know where they're from?

15 A I do not. They're not, as far as I know, Georgetown, no
16 sir.

17 Q Okay, you didn't recognize them as Georgetown ---

18 A I do not.

19 Q --- County addresses?

20 MR. FOX: Your Honor, at this time I would move
21 Defendant's Exhibit One into evidence.

22 THE COURT: Any objection?

23 MS. COTÉ: Yes, Your Honor, I would object to that
24 being hearsay. The person that made that dispatch record is
25 not here to testify to its authenticity.

Michael Thacker - Cross by Defense

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1 THE COURT: All right, I'm going to sustain the
2 objection.

3 BY MR. FOX:

4 Q Now, you observed, Investigator, the taxi off the road;
5 correct?

6 A Yes, sir.

7 Q Okay, and did you follow the track of the - from the taxi
8 back up to the road? There were visible tracks in the grass,
9 weren't there, from the road up to the car?

10 A That was the investigator that came on scene; handled
11 the processing and all that.

12 Q Okay, you didn't have any - you didn't follow that track
13 back up the road?

14 A No, sir, I could see that there was - yes, sir, I could
15 see where it came off the road.

16 Q A fairly straight line; wasn't it?

17 A But it looked like - appeared to be from after, after the
18 curve, there's a sharp curve.

19 Q Was there any obvious damage to the taxi, dents?

20 A I remember dents and some things on there, but like I
21 said I didn't, I didn't do anything with the processing. So,
22 I couldn't fairly answer that.

23 Q Okay, and did you - while you were on the scene did Mr.
24 King indicate direction where Mr. Geathers supposedly walked
25 away from, walked to?

Michael Thacker - Cross by Defense

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1 A I remember, believe he last saw him walking north, which
2 would have been toward Andrews. I'm sorry.

3 Q Did anybody go up - towards Andrews?

4 A Yes, sir.

5 Q I'm sorry. I didn't mean to cut you off.

6 Okay, so, Mr. King indicated that Mr. Geathers left going
7 north towards Andrews, did any - you or any other officers
8 walk up the highway in that direction to see if they could
9 locate Mr. Geathers or anything else, any clothing, guns,
10 anything?

11 A Two of the officers that were there with us went to that
12 direction into Andrews.

13 Q Okay, but, you didn't, you didn't do that; did you?

14 A No, sir.

15 Q Okay, let me jump back to the log that I asked you
16 about, aside from that fax from the North Area Taxi Company,
17 did you speak with anyone from the taxi company?

18 A I believe I called or called to check or to double
19 check, you know, with, with any of the information to make
20 sure there was everything there.

21 Q And was that consistent with what they had faxed you?

22 A As I remember, yes, sir.

23 MR. FOX: Just one moment, Your Honor.

24 THE COURT: All right.

25 BY MR. FOX:

Michael Thacker - Cross by Defense

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1 Q Was Mr. King ever given an opportunity you're aware of to
2 add to or change the written statement that he had given to
3 you? Did you ever have that opportunity with Mr. King to
4 either add ---

5 A Not that I ---

6 Q Go ahead. I'm sorry.

7 A I - well, once the investigator arrived on the scene and
8 she spoke with him after that so.

9 Q Okay, and one more, when you, when Mr. King finished
10 writing that statement for you did you give him a chance to,
11 before he signed it, to review it, look it over, make any
12 additions, subtractions that he needed to make, any changes?

13 A I'm sure that I would have.

14 Q That's fairly standard procedure in that situation; isn't
15 it, with any witness?

16 A Yes, sir.

17 Q Okay, thank you.

18 MR. FOX: Thank you, Your Honor, no further
19 questions.

20 THE COURT: Redirect?

21 MS. COTÉ: No, Your Honor.

22 THE COURT: All right, you may step down.

23 A Thank you.

24 THE COURT: Thank you. Call your next witness.

25 MS. COTÉ: The State calls Jonathan Lambert. Your

Michael Thacker - Cross by Defense

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1 Honor, may Investigator Thacker be excused?

2 THE COURT: Any objection?

3 MR. FOX: No, Your Honor.

4 THE COURT: All right, he's free to go. Thank you
5 very much.

6 Whereupon, Jonathan Lambert was called to the stand, duly
7 sworn by the Clerk and testified as follows:

8 THE CLERK: Thank you. Please be seated and state
9 your name for the record.

10 MR. LAMBERT: Jonathan Lambert.

11 DIRECT EXAMINATION

12 BY MS. COTÉ:

13 Q Mr. Lambert, were you employed by the Georgetown County
14 Sheriff's Office on August 5th, 2001?

15 A Yes, ma'am, I was.

16 Q What was your job title at that time?

17 A I was a criminal investigator in the Criminal
18 Investigative Division, Georgetown County Sheriff's Office.

19 Q Will you please discuss for the jury a little bit about
20 your background and training in law enforcement?

21 A Sure, I graduated 1997 from the University of South
22 Carolina with a Bachelor of Science Degree in Criminal
23 Justice, then went on to the Criminal Justice Academy. My
24 first job in law enforcement I was a patrol officer for the
25 Johnsonville City Police Department in Florence County, then

Jonathan Lambert - Direct by State

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1 moved closer to home where I was a uniform patrol deputy,
2 Georgetown County Sheriff's Office, for probably about a year,
3 year and a half, somewhere around there, then was promoted to
4 investigations. I handled all the investigation matters in
5 the Andrews area of Georgetown County and we handled
6 everything from - well, everything. Our captain used to say
7 handled everything from murder to mosquito bites. So, we did,
8 we kind of did everything. We didn't have a specialized unit.
9 After that, did that for a couple of years. I was the Chief
10 of Police in Andrews, Andrews PD, for about six months. Came
11 back to the Sheriff's Office as an investigator and then
12 finished out my patrol, finished out my time with the
13 Sheriff's Office as a patrol deputy, a corporal on patrol.
14 During the time at the Sheriff's Office in Andrews PD received
15 numerous classes in fingerprinting, homicide investigation,
16 white collar crime, pretty much everything. You know, we
17 handled all kinds of crimes. We got a multitude of training.

18 Q Are you currently employed by the Sheriff's Office?

19 A No, ma'am, I'm not.

20 Q Where are you currently employed?

21 A I'm currently employed as a train dispatcher with CSX
22 Transportation.

23 Q Were you the lead investigator on the case we're here for
24 today?

25 A Yes, ma'am, I was.

Jonathan Lambert - Direct by State

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1 Q How did you first become involved with this case?

2 A I first became involved with it as just a, Deputy Thacker
3 and patrol deputies do their initial report. The Captain of
4 Investigations, you know, Monday morning anything happened
5 over the weekend he would come in Monday morning and start
6 assigning cases, basically, to our areas. This being the
7 Andrews area, I was just assigned it as a routine matter.

8 Q What was the first step in your investigation of this
9 case?

10 A The first step in investigation of this case, I think if
11 I recall right, was contacting Mr. King, the victim.

12 Q And did you go to meet with the victim?

13 A Yes, ma'am, I did.

14 Q And where was - where did he live?

15 A He lived in the City of Charleston, right at the foot of
16 the Cooper River Bridge, if I remember right.

17 Q Did he describe what happened to you when - what happened
18 to him when you went to go meet with him?

19 A Yes, ma'am.

20 Q Did the incident he spoke of occur in Georgetown County?

21 A Yes, ma'am, it did.

22 Q After speaking with the victim what did you do that day?

23 A That day got Mr. King in the, in the car with me and I
24 think the victim's advocate Craig Henry was with me as well.

25 Put Mr. King in the car and just wanted to go ride and see if

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1 we could find some of the places where Mr. Geathers had or
2 where he had been taken to that day.

3 Q And where did he take you?

4 A Out toward St. Stephen in Berkeley County.

5 Q Was he, was he able to identify the house that the
6 Defendant had him drive to?

7 A Yes, ma'am, he was.

8 Q And did you - were you able to make contact with anybody
9 located at that house?

10 A No, ma'am, no one was home at that time.

11 Q Were you able to determine who lived there?

12 A Yes, ma'am, a neighbor, I think I knocked on the door and
13 asked the neighbor and she provided me with the owner's name.

14 Q Who was that owner?

15 A From, if I'm not mistaken, I think it was Ruby Allman.

16 Q And then what happened?

17 A We went to Ms. Allman's work. She lived - she worked at
18 a country store right down the road. So, we went down there
19 and spoke to Ms. Allman.

20 Q Did she give you any further information?

21 A Yes, ma'am, told me her daughter also lived there as
22 well.

23 Q And did she indicate that her daughter had any
24 relationship with this Defendant?

25 A Yes, ma'am, that her daughter and Craig Geathers were

Jonathan Lambert - Direct by State

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1 boyfriend and girlfriend or ex-boyfriend, girlfriend.

2 Q And did you ever make contact with that ex-girlfriend?

3 A Yes, ma'am, I did.

4 Q Did you drive anywhere else with the victim on that day?

5 A Yes, ma'am, we stopped at the gas station there at the,
6 it's kind of right at the intersection of Highway 17A and
7 Highway 52 just as you're coming into Moncks Corner before you
8 get to the Tailrace Canal.

9 Q And what did you - what was there - did you find anything
10 out at that location?

11 A Yes, ma'am, I spoke to the manager there and she had
12 remembered Mr. King from, I guess, two days previous. She had
13 opened up that morning and remembered seeing Mr. King in his
14 taxi cab.

15 Q Was there anything strange about that?

16 A Yeah, she stated that the taxi kind of went around two or
17 three times, kind of circling the gas station and then
18 stopped, Mr. King paid for, I think it was \$5 worth of gas and
19 only pumped like \$2. She had preset it for \$5, went about her
20 chores and then she looked up the cab was gone and they had
21 only pumped like \$2.50 worth of gas.

22 Q I'll go back to speaking to the Defendant's ex-
23 girlfriend. After you spoke to her, were you able - what was
24 your next step in your investigation?

25 A After speaking with her we got the name of Craig Geathers

Jonathan Lambert - Direct by State

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1 and tried to determine - tried to get together a photographic
2 lineup.

3 Q Did you - were you able to construct a photographic
4 lineup?

5 A Yes, ma'am, I was.

6 Q Will you provide the date and time and location that the
7 photo lineup was presented to the victim?

8 A Can I check my notes real quick to make sure?

9 Q Yes, if it helps to refresh your memory.

10 A Yes, ma'am.

11 MR. FOX: Your Honor, at this time, before we get
12 into this, I'll renew my objection to the lineup procedure as
13 well as - well, it would be another objection, to this point
14 to the lineup procedure and the same objections that we
15 discussed yesterday, Your Honor.

16 THE COURT: All right, your objection is noted,
17 overruled. Go ahead.

18 A Yes, ma'am, it was on August the 9th, 2001, at Mr. King's
19 residence in Charleston.

20 Q How did you go about constructing the lineup?

21 A I got it from North Charleston.

22 Q And did you use their equipment to help construct the
23 lineup?

24 A Yes, ma'am, I did.

25 Q Did you use the description that you had of this

Jonathan Lambert - Direct by State

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1 Defendant in constructing that lineup?

2 A Yes, ma'am, I did.

3 Q And what was your - what was the description that you had
4 of him?

5 A The description we had of him was a black male, kind of
6 regular build. I think he said kind of bumps on the face,
7 light skin complexion.

8 Q And you used the photograph of Craig Geathers as the, as
9 the suspect and his picture matched that description?

10 A Yes, ma'am, it did.

11 Q When you went to the victim's house, how long after the
12 crime was committed did you show him the photo lineup?

13 A This was four days.

14 Q Who else was present when you showed him that photo
15 lineup?

16 A The victim's advocate, Craig Henry.

17 Q Did you - what did you tell him before showing him the
18 photos?

19 A There's a passage, I guess was a passage is what you can
20 call it that's printed on the back of the photo lineup. I
21 read that to Mr. King before I showed him the photo lineup.

22 MS. COTÉ: Your Honor, may I approach the witness?

23 THE COURT: Yes, ma'am.

24 BY MS. COTÉ:

25 Q I'm going to show you what's been marked for

Jonathan Lambert - Direct by State

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1 identification as State's Exhibit Three. Do you recognize
2 this?

3 A Yes, ma'am.

4 Q And what is it?

5 A This is the photo lineup that I showed the victim, Mr.
6 King.

7 Q Does it appear to be in the same condition as it was when
8 you showed it to him on that day?

9 A Yes, ma'am, it does.

10 MS. COTÉ: Your Honor, the State would seek to
11 introduce this State's Exhibit Three into evidence.

12 THE COURT: All right over ---

13 MR. FOX: Over objection, Your Honor.

14 THE COURT: All right, over objection of the
15 Defendant, State's Exhibit Three is admitted into evidence.

16 (Whereupon, State's Exhibit Number Three [Photo Lineup]
17 admitted into evidence and appropriately marked.)

18 BY MS. COTÉ:

19 Q On the back is there a passage that you read to the
20 victim?

21 A Yes, ma'am, it is.

22 Q Will you read that to the jury?

23 A Sure, this states, "In a moment I am going to show you a
24 group of photographs. This group of photographs may or may
25 not contain a picture of the persons who committed a crime now

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1 being investigated. Keep in mind hairstyles, beards and
2 moustaches may be easily changed, also photographs may not
3 always depict the true complexion of a person; it may be
4 lighter or darker than shown in the photo. Pay no attention
5 to any markings or numbers that may appear on the photos or
6 any other differences in the type or style of the photographs
7 When you have looked at all the photos tell me whether or not
8 you see the person who committed the crime. Do not tell other
9 witnesses that you have or have not identified anyone."

10 Q After reading that to him, what did you do?

11 A I had Mr. King sign it and date it and then I signed it
12 as well.

13 Q And then what did you do?

14 A Then I showed Mr. King the photographic lineup.

15 Q Did you suggest to him in any way whose picture to pick?

16 A No, ma'am, I did not.

17 Q Did Ms. Henry, who was also with you, did she suggest to
18 him in any way which photo to choose?

19 A No, ma'am, she did not.

20 Q Was he able to pick out a picture of the person who
21 robbed him and kidnapped him?

22 A Yes, ma'am, he did.

23 Q And whose picture was that?

24 A Craig Geathers.

25 Q Did he indicate in writing on that which picture he

Jonathan Lambert - Direct by State

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1 chose?

2 A Yes, ma'am, I also had him initial his choice, which one
3 he chose, and his initials are under number two, Mr.

4 Geathers's photograph.

5 Q How long did it take for him to make that selection?

6 A Three seconds maybe.

7 Q How sure of himself did he seem?

8 A Very confident.

9 Q Did he indicate that to you in words?

10 A Yes, ma'am, he just kept saying, "That's the guy. I'm
11 positive that's the man."

12 MS. COTÉ: Beg the Court's indulgence.

13 THE COURT: All right.

14 BY MS. COTÉ:

15 Q What did you do after the Defendant was selected from
16 that lineup?

17 A After the Defendant was selected from that lineup, I
18 obtained warrants for armed robbery and kidnapping.

19 Q Were those warrants served on him at that time?

20 A No, ma'am, they were not.

21 Q Why were you not able to serve those warrants on him?

22 A We weren't able to find him.

23 Q Did you attempt to locate him through all the normal
24 channels that you normally attempt to serve warrants?

25 A Yes, ma'am.

Jonathan Lambert - Direct by State

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1 Q Did you try his known address?

2 A Yes, ma'am, I think we asked North Charleston to maybe
3 try. The only known address we had was a North Charleston
4 address, was the only address, known address we had for, last
5 known address we had for him.

6 Q Did you have any information that he lived in Georgetown
7 County at times?

8 A We had information that he had relatives in Georgetown
9 County, yes, ma'am.

10 Q And did you attempt to locate him at that house as well?

11 A Yes, we did.

12 Q At that point after you were unable to find him what did
13 you do?

14 A After that time we were unable to find him, he was
15 entered into the national computer as a wanted person with
16 felony warrants. It goes out nationwide to all law
17 enforcement agencies. If you were to run, like get like
18 stopped and your license was run and the officer ran you
19 through the national computer it would come up as a wanted
20 person.

21 Q Thank you.

22 MS. COTÉ: No further questions from this witness.

23 THE COURT: All right. Mr. Fox?

24 MR. FOX: May we approach briefly?

25 THE COURT: All right.

Jonathan Lambert - Cross by Defense

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1 (Whereupon, a bench conference is held in the presence
2 but out of the hearing of the jury.)

3 THE COURT: All right, Mr. Fox, cross examination.

4 MR. FOX: Thank you, Your Honor.

5 CROSS EXAMINATION

6 BY MR. FOX:

7 Q Investigator Lambert, you indicated you were unable to
8 locate, you had an address in Georgetown County where Mr.
9 Geathers might be and you were you unable to locate him;
10 correct?

11 A Yes, sir, that's right.

12 Q And that was his aunt's house; isn't that right?

13 A I was told yeah, an aunt or some, some relative, yes,
14 sir.

15 Q Okay, did you ever search that house, get a search
16 warrant and go through it?

17 A No, sir, we didn't.

18 Q How about did you go to his address in North Charleston?

19 A I never went, I never went to his address in North
20 Charleston, no, sir.

21 Q Do you know if anybody did or did you call down and ask
22 the North Charleston Police to go?

23 A I asked them to check and if they did or not I have no
24 idea.

25 Q As far as you know then there was never a search warrant

Jonathan Lambert - Cross by Defense

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1 executed, obtained or executed for the North Charleston
2 residence either?

3 A No, sir, not as, not that I'm aware of.

4 Q Wouldn't it be reasonable to think that perhaps you might
5 find, was there not a description of a gentleman in a hat,
6 glasses, particular kind of shirt with writing on it, that was
7 the description; correct?

8 A Yes, sir, yeah.

9 Q Okay, in other words, you had a description of physical
10 characteristics, but you also had a clothing description of
11 the suspect?

12 A Yes, sir, I think the initial report was given to the
13 deputies that morning, yes, sir.

14 Q Okay, but there was no, that you're aware of, no effort
15 made to locate any of those items?

16 A No, sir, not that I'm aware of.

17 Q And there was, the victim indicated that the person who
18 robbed him had a handgun; correct?

19 A Yes, sir, that's right.

20 Q Okay, because that would be something else you might look
21 for if you were to search either of these residences.

22 A Yes, sir.

23 Q Okay, and a pink towel, right, there was a towel or
24 something, some kind of cloth ---

25 A Right.

Jonathan Lambert - Cross by Defense

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1 Q --- that supposedly was over the hand kind of concealing
2 the weapon?

3 A Yes, sir.

4 Q Okay, so, none of these items were never located, is that
5 correct?

6 A No, sir, none were ever located that I'm aware of.

7 Q Did you or are you aware, at the scene where the cab was,
8 near off the - off Highway 41, did you go, actually go to the
9 scene yourself?

10 A No, sir, I never did.

11 Q Okay, do you know of your own - do you know or are you
12 aware whether anybody ever searched the roadside leading in
13 each direction for those items, for the gun or anything else?

14 A Other than what the initial investigator who was on call
15 that morning may have done I don't - I'm not aware of anybody
16 else doing anything out there, no, sir.

17 Q Okay, but regardless no gun was found?

18 A No, sir.

19 Q No hat?

20 A No, sir.

21 Q No shirt with Iowa written on the front of it?

22 A No, sir.

23 Q No pink towel?

24 A No, sir.

25 Q Okay, now, when you went with, when you went with Mr.

Jonathan Lambert - Cross by Defense

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1 King back to the gas station, that was a Hess station; is that
2 correct?

3 A Yes, sir, at that time I think it was a Hess station,
4 yes.

5 Q Okay, and you were actually able to locate someone who
6 remembered seeing the cab that morning; is that correct?

7 A Yes, sir.

8 Q Okay, was she able to give you a description of the
9 suspect - of another - of the passenger in the cab?

10 A Not that I recall, no, sir.

11 Q Okay, you would have known, I mean, if she had, you would
12 have noted, manager of the Hess station gave me a description
13 of - whatever it may be.

14 A Yes, yeah, yeah, I would have, yeah, I would have made
15 some note of it, yes, sir.

16 Q But she definitely recalled Mr. King and his cab?

17 A Yes, sir.

18 Q And that he, in fact, purchased some gas?

19 A Right.

20 Q Okay, and the fact that he went inside to pay for the
21 gas?

22 A Yes, sir, I assume so since she remembered him, yes.

23 Q Because he prepaid for five, right, she said it was \$5,
24 but he didn't pump all that; right?

25 A Right.

Jonathan Lambert - Cross by Defense

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1 Q Okay, you'd have to go inside to have her set the pump
2 for just \$5; correct?

3 A I guess so, yes, sir.

4 Q Okay.

5 MR. FOX: One moment, Your Honor.

6 THE COURT: All right.

7 BY MR. FOX:

8 Q Did, did the attendant, were you able to establish a time
9 that Mr. King and his cab were at that gas station, roughly?

10 A Best I can recall from conversation with her was it was
11 early in the morning, she had just opened up, so I'm - I can
12 look in my notes if you mind and ---

13 Q Yeah, you can refresh your memory.

14 A Sure, thank you. Let me see if I can - yes, sir, the
15 only thing that I can see is that she had stated she had just
16 opened up and I don't know what time that was, but she had
17 just opened the store just previous to him arriving.

18 Q Okay.

19 MR. FOX: Okay, thank you, Your Honor, that's all.

20 THE COURT: Redirect?

21 MS. COTÉ: No, Your Honor.

22 THE COURT: All right, you may step down.

23 Ms. Coté, you may call your next witness.

24 MS. COTÉ: Sergeant James Heyward.

25 WHEREUPON, James Heyward was called to the stand, duly .

James Heyward - Direct by Ms. Coté

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1 sworn by the clerk and testified as follows:

2 THE CLERK: Please be seated and state your name for
3 the record.

4 MR. HEYWARD: James Heyward.

5 DIRECT EXAMINATION

6 BY MS. COTÉ:

7 Q Sergeant Heyward, where are you employed?

8 A Georgetown County Sheriff's Office.

9 Q What's your job there?

10 A I'm the sergeant in charge of the warrants division.

11 Q Will you please discuss for the jury a little bit about
12 your job duties as part of the warrants division?

13 A Well, we serve warrants throughout the County of
14 Georgetown, handle extradition, transporting.

15 Q How did you become involved in this case against Craig
16 Geathers?

17 A Well, we receive warrants in every day and his was one of
18 the ones that we got in that particular day for service.

19 Q Did you receive information about his location?

20 A We attempt to serve him that warrant the address that we
21 had and we made several attempts but we had negative contact.

22 Q Did you more recently receive information about his
23 whereabouts?

24 A Well, we had a hit confirmation from New York.

25 Q That through the NCIC?

James Heyward - Direct by Ms. Coté

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1 A That's through the NCIC, which is the ---

2 MR. FOX: Your Honor, may we approach very briefly?

3 THE COURT: Yes.

4 (Whereupon, a bench conference was held in the presence
5 but out of the hearing of the jury.)

6 BY MS. COTÉ:

7 Q After you received information that Mr. Geathers was in
8 New York what did you do?

9 A They asked us if we wanted to extradite him back here and
10 the Sheriff's Office said yes. So, I made arrangement and had
11 two officers to go up there to pick him up and bring him back
12 to South Carolina.

13 Q And when was he brought back down here?

14 A On October 19th of last year.

15 Q Of 2009?

16 A That is correct.

17 MS. COTÉ: I have no further questions for this
18 witness.

19 THE COURT: All right, Mr. Fox?

20 MR. FOX: No questions, Your Honor.

21 THE COURT: All right, you may step down. Thank you.

22 MS. COTÉ: Your Honor, may this witness be excused?

23 THE COURT: Any objection?

24 MR. FOX: No, Your Honor.

25 THE COURT: All right, he's free to go. Thank you

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1 very much.

2 A Thank you, thank you, sir.

3 MS. COTÉ: Your Honor, may we approach?

4 THE COURT: All right.

5 (Whereupon, a bench conference was held in the presence
6 but out of the hearing of the jury.)

7 THE COURT: All right, ladies and gentlemen, now is
8 the time we're going to take a midmorning break, give you an
9 opportunity to stretch your legs, get something to drink, use
10 the restroom, whatever the case may be. We'll take about a
11 15-minute break. I caution you please do not discuss this
12 case even among yourselves at this point in time. It's too
13 early for deliberations. Please do no conduct any independent
14 investigations or try to find out anything about the case.
15 We'll take a short break and we'll bring you back in shortly.
16 Thank you very much. Everybody else please remain seated
17 while the jury's excused.

18 (Whereupon, the following takes place outside the
19 presence of the jury.)

20 THE COURT: All right, let's take about a 15-minute
21 break; okay?

22 MR. FOX: Thank you, Your Honor.

23 OFF THE RECORD

24 (On the record.)

25 (Whereupon, the following takes place outside the

State v. Geathers

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1 presence of the jury.)

2 THE COURT: All right, before we bring the jury back
3 in, I think we had a matter to address regarding Plaintiff's
4 Exhibit Three. That's the photo lineup. I understand that
5 the folded underwritten part behind the pictures we were going
6 to redact that; is that correct?

7 MS. COTÉ: That's correct, Your Honor.

8 THE COURT: All right, and how are we going to do
9 that?

10 MS. COTÉ: We can take a straight edge paper cutter
11 so it doesn't appear that anything's been cut off.

12 THE COURT: Okay.

13 MS. COTÉ: And just redact it that way and then have
14 that portion stay with Grace so it's not altering the Court's
15 Exhibit in anyway. It's just - I understand that that is
16 prejudicial to the Defendant.

17 THE COURT: Okay, is that agreeable with you, Mr. Fox?

18 MR. FOX: Absolutely, Your Honor, that would have
19 been my suggestion and ---

20 THE COURT: All right, well, let's go ahead and do
21 that then. Let's see, that is - let's do Plaintiff's Exhibit
22 Three, it has written, written materials after the pictures.
23 Let's go ahead and redact that, cut that off and I'll put that
24 as a Court's Exhibit. What would that be?

25 COURT REPORTER: Three.

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1 THE COURT: All right, Court's Exhibit Three which is
2 the redacted portion of Plaintiff's Exhibit Three. Okay?

3 MR. FOX: Thank you, Your Honor.

4 MS. COTÉ: Your Honor ---

5 THE COURT: All right, do we want to go ahead and do
6 that?

7 MS. COTÉ: I could do that now or I don't - oh, I
8 will use it again. Yes, Your Honor.

9 THE COURT: Yeah, if we're going to use it again,
10 let's ---

11 MS. COTÉ: I was going to say I don't think I'll use
12 it again before lunch but I will.

13 THE COURT: All right, let's go ahead and do it that
14 way then.

15 (Court's Exhibit Number Three [Bottom of Photo Lineup]
16 appropriately marked.)

17 THE COURT: All right, anything from the State before
18 we bring the jury back?

19 MS. COTÉ: No, Your Honor.

20 THE COURT: Anything from the Defense?

21 MR. FOX: No, Your Honor.

22 THE COURT: All right, let's go ahead and bring the
23 jury in.

24 (Whereupon, the following takes place in the presence of
25 the jury.)

Betty McCray - Direct by State

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1 THE COURT: All right, ladies and gentlemen, welcome
2 back. We're ready to resume the trial of the case.

3 Ms. Coté, you can call your next witness.

4 MS. COTÉ: The State calls Betty McCray.

5 THE COURT: All right.

6 Whereupon, Betty McCray was called to the stand, duly
7 sworn by the clerk and testified as follows:

8 THE CLERK: Thank you. Please be seated and state
9 your name for the record, spelling your last name, please.

10 MS. MCCRAY: Betty B. McCray, and that's M-C-C-R-A-Y.

11 THE COURT: All right, Ms. Coté.

12 DIRECT EXAMINATION

13 BY MS. COTÉ:

14 Q Ms. McCray, will you begin by telling the jury a little
15 bit about yourself?

16 A I'm a Delta flight attendant based in Atlanta for 17
17 years. That's my occupation. I have a daughter that's 16
18 years old and a husband, Randy Buggs.

19 Q And where do you live?

20 A I live in Moncks Corner, South Carolina.

21 Q Were you in a relationship with the Defendant in this
22 case, Craig Geathers?

23 A Yes.

24 Q And when did that relationship take place?

25 A Around November 2000.

Betty McCray - Direct by State

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1 Q And how did you meet?

2 A Met in New York, met in New York. I was based in New
3 York as a flight attendant and that's where I met him.

4 Q And did you ever see him in South Carolina?

5 A Yes.

6 Q Did he have family down here?

7 A Yes.

8 Q And where were they located?

9 A Georgetown, South Carolina.

10 Q Do you know where in Georgetown?

11 A I don't remember exact location, no.

12 Q Do you know what family members lived in Georgetown?

13 A An aunt and first cousins.

14 Q Do you remember when you broke up?

15 A It was the early part of 2001.

16 Q Was it a mutual breakup?

17 A No.

18 Q And how did he - was it - did you break up with him or
19 did he break up with you?

20 A I break up with him.

21 Q And how did he act after that breakup?

22 A It was a horrible breakup.

23 Q Was he upset?

24 A Yes.

25 Q Who lived at 1693 Highway 45 in Pineville?

Betty McCray - Direct by State

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1 A That's my mother address.

2 Q Did you live there from time to time?

3 A Yes.

4 Q I'm going to show you what's marked as State's Exhibit
5 Four. I've already shown this to Mr. Fox. Do you recognize
6 this house?

7 A Yes, I do.

8 Q Is that an accurate depiction of your home or your
9 mother's home?

10 A That is correct, that is my mother home.

11 Q And were you living there in 2001?

12 A Yes.

13 MS. COTÉ: Your Honor, the State would seek to
14 introduce Exhibit Four into evidence.

15 THE COURT: Any objection?

16 MR. FOX: No, Your Honor.

17 THE COURT: All right, State's Exhibit Number Four
18 admitted into evidence without objection.

19 (Whereupon, State's Exhibit Number Four [Photograph]
20 admitted into evidence and appropriately marked.)

21 MS. COTÉ: Your Honor, may I publish this to the
22 jury?

23 THE COURT: Yes, ma'am.

24 BY MS. COTÉ:

25 Q When is the last time that you heard from this Defendant

Betty McCray - Direct by State

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1 or Mr. Geathers?

2 A Early part of 2001.

3 Q Have you ever seen him around the Charleston area or
4 around Georgetown since then?

5 A No.

6 Q Do you have knowledge if he drives?

7 A No, no knowledge of him driving.

8 Q Does he have a car or did he have a car at the time?

9 A Not of my, not of my knowledge.

10 Q Do you see your former boyfriend, Craig Geathers, in the
11 courtroom today?

12 A Yes.

13 Q Will you please identify him for the record? What's he
14 wearing? Where is he sitting?

15 A He has on a gray and white t-shirt and he is sit ---

16 Q Is he seated at the defense table?

17 A At the defense table at the right of me.

18 MS. COTÉ: Let the record reflect she's identified
19 the Defendant.

20 THE COURT: All right.

21 MS. COTÉ: Nothing further from this witness, Your
22 Honor.

23 THE COURT: All right, Mr. Fox?

24 MR. FOX: Thank you, Your Honor.

25 CROSS EXAMINATION

Betty McCray - Cross by Defense

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1 BY MR. FOX:

2 Q Ms. McCray, you last heard from Mr. Geathers in early
3 2001; correct?

4 A Correct.

5 Q Okay, and you met him when you were based working out of
6 New York City?

7 A That's, that is correct.

8 Q And in fact he lived, at the time, that was in late 2000;
9 is that right?

10 A That's when I met him, yes.

11 Q Okay, and was he not living with his mother in New York
12 City at that time?

13 A Yes.

14 Q And they lived up on 140th, West 143rd Street, does that
15 sound right?

16 A Correct.

17 Q Okay, and in fact he had lived there with his mother
18 since 1975; isn't that correct?

19 A I don't have any knowledge of that, sir.

20 Q Okay, but he was living with her at that time and you, in
21 fact, went to that house at least at some point and met him at
22 his house. Is that right?

23 A That's correct.

24 Q Okay, and as of the time that you broke up with - rather,
25 yeah, you broke up with Mr. Geathers in early 2001. As far as

Betty McCray - Cross by Defense

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1 you know was his mother still living on 143rd Street in New
2 York City?

3 A Yes.

4 Q Okay, did - when did you come down to stay with your
5 mother in Pineville? Back in 2001, if I understood, you were
6 living with your mother, the photograph we saw of her house in
7 Pineville?

8 A That's correct.

9 Q Okay, and you came down, was that just for a visit or to
10 live with her or what was those circumstances?

11 A To live with her.

12 Q Okay, was that to be permanent at least at that time?

13 A I don't understand your question.

14 Q Did you intend to - once you moved back in with her, did
15 you intend to stay there indefinitely?

16 A No.

17 Q Okay, how long were you, were you with her?

18 A It was temporary and I don't recall for how many months.

19 Q Okay, when did you move, move down here to stay with her?

20 A I don't remember.

21 Q Were you still dating Mr. Geathers at that time?

22 A No.

23 Q Okay, and Mr. Geathers has family in Georgetown; correct?

24 A That is correct.

25 Q Okay, and those family members as far as you know were

Betty McCray - Redirect by State

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1 here in August of 2001?

2 A I don't remember dates.

3 Q Okay, but at the time that you were down here staying
4 with your mom in Pineville - withdraw that question, Your
5 Honor. During the time that you were living and that you came
6 down to stay with your mother in Pineville, was there a time
7 where you and Mr. Geathers shared an apartment? Shared rent?

8 A Repeat that.

9 Q Was there a time in 2001 that you and Mr. Geathers shared
10 an apartment?

11 A I don't remember dates. There were a time I lived in an
12 apartment.

13 Q Here in South Carolina?

14 A Here in South Carolina.

15 Q And in fact you shared the rent with Mr. Geathers?

16 A Don't recall.

17 Q Don't recall? So that's not a no, you just don't
18 remember?

19 A Don't remember.

20 Q Okay, thank you. That's all I have.

21 THE COURT: Redirect?

22 MS. COTÉ: Briefly.

23 REDIRECT EXAMINATION

24 BY MS. COTÉ:

25 Q Did Mr. Geathers ever go to your mother's house? Did he

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1 know where it was located?

2 A I don't remember.

3 Q Did you, did you ever - did he know that you were living
4 there at any point in time?

5 A Not of my knowledge.

6 Q Thank you.

7 THE COURT: All right, you may step down.

8 MS. COTÉ: Your Honor, may this witness be excused?

9 THE COURT: Any objection?

10 MR. FOX: No, Your Honor.

11 THE COURT: All right, you can be excused. Thank you.

12 All right, you can call your next witness.

13 MS. COTÉ: The State calls Harold King.

14 Whereupon, Harold King was called to the stand, duly
15 sworn by the clerk and testified as follows:

16 THE CLERK: Thank you. Please be seated and state
17 your name for the record, please.

18 MR. KING: Harold J. King.

19 DIRECT EXAMINATION

20 BY MS. COTÉ:

21 Q Mr. King, will you please start off by telling the jury a
22 little bit about yourself, where do you live, how old you are,
23 what you do for a living, where you're from, just a little bit
24 of background about yourself.

25 A My name is Harold King, just turned 54 on yesterday. At

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1 one time I was born and raised in Charleston, but I moved to
2 Columbia and I've been living there for the past eight years.
3 I've worked at Louis Rich Meat Processing Turkey Plant and
4 right now I'm residing in Columbia.

5 Q All right, did you live in Columbia back in 2001?

6 A No, I didn't.

7 Q Where did you live back then?

8 A Charleston, South Carolina.

9 Q What was your job in 2001?

10 A I drove North Area cab.

11 Q Were you working as a taxi driver on August 5th, 2001?

12 A Yes, I was.

13 Q Did you receive a call to pick up a passenger that day in
14 the Moncks Corner area I believe?

15 A I was in the North Charleston area.

16 Q Okay, where did you go to pick him up?

17 A I believe it was Toronto Plaza, I'm not positive, but it
18 was at a little night club where he was standing outside
19 waiting.

20 Q And where did he tell you he wanted to go?

21 A Said he wanted to go to St. Stephen.

22 Q And then what happened?

23 A And, well, I got another call that from the North
24 Charleston Police Department to pick up a young lady at a gas
25 station because she was going in the same area that I was

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1 taking the passenger that I had, Mr. Geathers.

2 Q So, did you go pick her up?

3 A Yes, I did.

4 Q And did you take her to her destination?

5 A Yes, I took her to her destination, and once I dropped
6 her off I proceeded to take Mr. Geathers where he wanted to
7 go.

8 Q And then what happened?

9 A It's customary that we get half the fare up front, and as
10 we were proceeding to St. Stephen I kept asking him for the
11 money and he wouldn't give it to me. So, I told him, "Well,
12 I'm going to pull over right here," which was in Moncks Corner
13 and until he give me the money, "Or either you're going to
14 have to get out." So when I pulled over and I got out to open
15 the door, Mr. Geathers came out his - he had a backpack and h
16 came out the backpack with a pistol and told me to get in the
17 car and drive.

18 Q And do you remember what hand he was holding the gun in?

19 A He was holding it in his right hand.

20 Q And where was he sitting in the cab?

21 A In the backseat right behind me.

22 Q And where did he hold the gun to you?

23 A To the back of my head.

24 Q And at that point did you get back in the car and drive?

25 A Yes.

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1 Q And where did you go next?

2 A I proceeded to St. Stephen to take him to where he wanted
3 to go which he said was his girlfriend's house.

4 Q Okay, was anybody home when you got to the girlfriend's
5 house?

6 A No, nobody came to the door.

7 Q At some point did he give you any information about why
8 he was going there?

9 A Yeah, he made the statement that ---

10 MR. FOX: Your Honor, I'm going to object, renew our
11 previous objection to these statements that are about to be
12 testified to.

13 THE COURT: All right, overruled.

14 MR. FOX: Thank you, Your Honor.

15 A He made the statement that he was going there to kill his
16 girlfriend.

17 Q How was he acting?

18 A He was acting - he was upset that she wasn't there and he
19 got, I mean, he just got - it just made him angrier when he
20 found out she wasn't there and he started to blame me for her
21 not being there because I didn't take him - I wasn't driving
22 quick enough to get him there.

23 Q Was he - what else, what else did he say to you directed
24 towards you?

25 A He said, he told me that he was going to kill me.

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1 Q Why was he going to kill you?

2 A He said because his girlfriend had made him angry and if
3 she was at home he was going to kill her first and then he wa
4 going to kill me, but she wasn't there. So, we proceeded - he
5 told me he wanted to go to Georgetown, and as I drove I told
6 him I had - I didn't have enough gas.

7 Q Let me interrupt you real quick. I want to show you
8 what's been marked as State's Exhibit Four. Was this the
9 house that you drove to in St. Stephen?

10 A Yeah, yeah, that's it. That's the house.

11 Q And is that where you - did you pull up in front of that
12 house?

13 A He had me to pull directly in front of the door where my
14 headlights would shine on the door and blow the horn so he
15 could see if anybody come to the door.

16 Q And did he get out of the car at that point?

17 A No, he had me to get out the car and go knock on the door
18 and still nobody answered.

19 Q And his gun was still out this whole time?

20 A Yeah, he had the gun in his hand.

21 Q Thank you. So, when you all determined that nobody was
22 home, I interrupted you, I'm sorry where did you go next?

23 A That's when he told me that I was going to take him to
24 Georgetown and he had the gun to the back of my head. He told
25 me pull out and then head to Georgetown and we got down the

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1 road apiece, and, you know, I'm trying to figure out what I
2 could do and I told him I needed gas because I couldn't make
3 it to Georgetown with the gas that I had and we pulled up to
4 the gas station and I rode from one side of the gas station
5 around to the other side. I did it twice, and then I stopped
6 to the pump and I got out to go to pay for the gas and then he
7 got out and he was standing outside the cab watching me while
8 I was inside, and when I paid the lady I was trying to explain
9 to her what was going on but she went in the office and that's
10 when he came on to the door with the gun in his hand telling
11 me to come on out and I came out the store and went back to
12 the cab, tried to pump the gas but he wouldn't let me pump it.

13 Q He wouldn't let you finish pumping?

14 A No.

15 Q Why wouldn't he let you pump?

16 A Because he felt like I had told the lady in the store to
17 call the police to tell them what was going on and he made me
18 get in the cab and he had the gun to my head and he kept
19 telling me, say, "I'm going to kill you if I see anybody
20 behind us. If the police come, I'm going, I'm going to shoot
21 you and push you out the cab," and he had me drive 75 miles,
22 80 miles an hour nonstop, no stop signs, no stoplight,
23 nothing. Just keep driving, that's what he told me.

24 Q How were you feeling while all this was going on?

25 A I was scared, scared, nervous and angry.

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1 Q Were you talking to him at all during this?

2 A Yes, I tried. I tried to get an understanding of why was
3 he doing this, you know, because I told him that, you know, I
4 was just out here trying to make a living, you know, trying to
5 make some money, pay my bills, go home see my granddaughter,
6 you know.

7 Q So, you told him you had a granddaughter?

8 A Yes.

9 Q Did you think maybe he wouldn't hurt you if he knew you
10 had family?

11 A Yeah, but once we left the gas station he got angrier
12 because he thought I had told the lady in the gas station,
13 which I did try to explain to her what was going on, but she
14 went in the office and locked the door. So, I don't know if
15 he saw it but he was at - he left from by the cab where he was
16 with the gun and he came to the door and he motioned me to
17 come on outside with the gun in his hand still.

18 Q And so you - after he didn't let you finish pumping the
19 gas, you got back in the cab.

20 A Yes.

21 Q And you continued on to Georgetown. You already
22 testified that you were going at excessive speeds. He
23 wouldn't let you stop - would he let you stop for stoplights
24 or stop signs?

25 A No, no, he just tell me keep on riding because if he see

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1 the first policeman he sees he was going to shoot me. He was
2 going to kill me automatic.

3 Q And do you remember entering Georgetown?

4 A Yes. When we got into Georgetown we passed - I remember
5 seeing the sign that said Georgetown and then we pulled up to
6 a store.

7 Q The gun was still being held to your head this whole
8 time?

9 A Yeah, yes, the whole time.

10 Q Okay, and then you remember seeing the store. Did you
11 stop at that store?

12 A Yeah, we pulled in the lot.

13 Q And what, what happened there?

14 A And he said his aunt live over there and he started to
15 get out, but he said something about he had took the gun and
16 he wasn't going home. He got back in the cab and we took off
17 again.

18 Q And he was - and where did he tell you he wanted to go
19 then?

20 A He wanted to come back down to Charleston.

21 Q Okay.

22 A But at that time I was so nervous and scared I couldn't
23 keep the car in the road and I ran off - I was going around a
24 curve and I ran off the road.

25 Q Okay.

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- 1 A And that's when he exit the cab and told me he said,
2 "Give me the money," and he said, "Don't look back." He said,
3 "You just keep looking straight ahead," and he was gone.
- 4 Q Did he tell you what would happen if you looked back?
- 5 A He told me he would kill me.
- 6 Q Did you try to get the car out of the ditch?
- 7 A Yes, I tried.
- 8 Q Did he tell you to try?
- 9 A No.
- 10 Q You just wanted to keep going?
- 11 A Yeah.
- 12 Q Did police respond to the scene of your car being in the
13 ditch on the side of the road?
- 14 A Yes, about - maybe about 30, 45 minutes after I was out
15 there somebody came by and they called the police.
- 16 Q I'm going to show you what's been entered into evidence
17 as State's Exhibits One and Two. Do you recognize these
18 pictures?
- 19 A Yes, ma'am.
- 20 Q What are those pictures of?
- 21 A Picture of my cab in the ditch.
- 22 Q And that's what it looked like on that day?
- 23 A Yes.
- 24 Q Thank you. After this happened did you go back to
25 driving that cab?

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1 A I tried, but I couldn't do it. I couldn't do it.

2 Q Were you scared?

3 A Yeah, you know, I couldn't - with somebody sitting behind
4 me, I couldn't do it, you know, and I made pretty good money
5 while I was driving a cab, you know. I was going to make that
6 my livelihood until that incident.

7 Q And after that you moved to Columbia?

8 A Yeah, two weeks later I moved to Columbia and I never
9 came back, went back to Charleston.

10 Q I'm going to go back a little bit. I'm jumping around.

11 I'm sorry. Back at the scene where I just showed you the
12 pictures of and you told me the police responded to the scene?

13 A Yes.

14 Q Did you give a written statement to an officer at the
15 scene?

16 A Yes, I believe it was at the scene that they had me to
17 sit down and write out what I could remember and ---

18 Q How were you feeling at that time?

19 A I was still scared and, you know, upset. I wasn't really
20 thinking clearly. I was thinking, but what I was thinking, it
21 didn't come out on the paper the way, you know, the events
22 took place.

23 Q But what you're telling us today, is that how things took
24 place?

25 A The time, the time span was - the time was different.

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1 Q And what was ---

2 A I didn't put down from the time that I picked him up
3 until the time everything sort of kind of ended.

4 Q Okay.

5 A Because when the call came over the radio, I was droppin'
6 off a passenger and I was in the area that he was in and the
7 call came out that if anybody was in that area, this person
8 was at this location and the fare would be \$28 and I was in
9 that area. So, I was the one that picked him up and that was
10 around 12:30, one o'clock.

11 Q Okay, did you speak - did you ride around that area where
12 the crash was with Officer Thacker?

13 A Yeah, they rode me around trying to find the area that I
14 told them we stopped at first where I saw the Georgetown sign.

15 Q And were you able to identify that area?

16 A Yes, when they were taking me back to the station and we
17 passed by and I told them that was the store and that was the
18 area that we stopped at first.

19 Q Okay, and that was in Georgetown?

20 A Yes.

21 Q Did Investigator Lambert, right here, and another lady,
22 victim advocate, come meet with you?

23 A Yes, they did.

24 Q What did you do with them that day?

25 A I took them back to the house where I took Mr. Geathers.

Harold King - Direct by State

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1 Q And was that the house that I showed you a picture of
2 earlier?

3 A Yes, it was.

4 Q Did you have any trouble finding that house?

5 A No, I didn't.

6 Q Did Investigator Lambert meet with you again and show you
7 a photo lineup?

8 A Yes, he did.

9 Q I'm going to show you that photo lineup. It's in
10 evidence as State's Exhibit Three. Is that what you were
11 shown by Investigator Lambert?

12 A Yes, it was.

13 Q Do you remember what he told you, if anything, before he
14 showed it to you?

15 A I don't really remember what he said.

16 Q If you'd flip over onto the back of that lineup.

17 A I remember him reading, reading what was on the back of
18 it before. I think it was line six, five or six.

19 Q And was that your signature at the bottom?

20 A Yes, it is.

21 Q That he had read it to you?

22 A Yes, it is.

23 Q Okay, and did he - and then at that point did he show you
24 that photo lineup?

25 A Yes.

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1 Q Did he suggest to you in any way who to choose?

2 A No.

3 Q Were you able to identify a picture in that photo lineup
4 as the person that kidnapped you and then robbed you?

5 A Yes, I was.

6 Q Who were you able to select?

7 A The Defendant.

8 Q Was the picture - which picture on that was there?

9 A It was the second picture.

10 Q Was there any doubt in your mind that that was the same
11 person?

12 A No, ma'am, no doubt.

13 Q Were you able to quickly identify him?

14 A Yes, I was.

15 Q Do you see the person that committed the crime in the
16 courtroom here today?

17 A Yes, I do.

18 MR. FOX: Your Honor, I'm going to - pardon me for
19 interrupting, Mr. King, but I'm going to object to the in-
20 court identification based on my previous objection to the
21 photo lineup.

22 THE COURT: All right, objection's noted. It's
23 overruled. Go ahead.

24 Q Will you please point him out for the jury.

25 A He's right there.

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1 MS. COTÉ: Let the record reflect that he's ---

2 A At the Defendant's ---

3 MS. COTÉ: --- identified the Defendant, Craig
4 Geathers.

5 BY MS. COTÉ:

6 Q Is there any doubt that that's the same person?

7 A No doubt.

8 Q Had you ever seen him before that night?

9 A No, never.

10 Q So, you didn't know him at all?

11 A No, I didn't.

12 Q Mr. Fox will ask you about this, you have a little bit of
13 a criminal record; is that correct?

14 A Yes, yes, I do.

15 Q Do you have a possession of cocaine conviction?

16 A Yes.

17 Q And do you have a possession of stolen goods conviction
18 back in 1993?

19 A I don't remember being convicted of it.

20 Q Okay.

21 A But I remember being in possession of some - a stolen
22 item.

23 Q Okay.

24 MS. COTÉ: Beg the Court's indulgence.

25 THE COURT: All right.

Harold King - Cross by Defense

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1 BY MS. COTÉ:

2 Q Do you remember when the Defendant was in the car with
3 you what if anything he told you about his relationship with
4 Betty McCray, the woman whose house you all went to?

5 A Yes, he said they had broken up and she had him kicked
6 out and he went back and he kicked in the door and ---

7 Q Let me stop you. Don't go into anything. Do you know
8 anything else? Did he tell you what she did for a living?

9 A He told me she was a airline stewardess and that he met
10 her in New York on a flight to South Carolina for a funeral.

11 Q Okay.

12 MS. COTÉ: Nothing further, Your Honor.

13 THE COURT: All right, cross examination?

14 MR. FOX: Thank you, Your Honor.

15 CROSS EXAMINATION

16 BY MR. FOX:

17 Q Mr. King, how long ago did this happen?

18 A About nine years ago.

19 Q Okay, and when did you give the statement that you wrote
20 to the police, Investigator Thacker? When was that done?

21 A I think it was like an hour or two afterwards.

22 Q An hour or two afterwards?

23 A Yeah, it might have been a little more give or take an
24 hour or so.

25 Q So, that's an hour or two after your car - after your

Harold King - Cross by Defense

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1 taxi ran off the road?

2 A No, after they drove me around trying to find the welcome
3 to Georgetown sign where we stopped at at first.

4 Q So, first you drove around with the officers, then you
5 came back and then you wrote your statement?

6 A Yeah.

7 Q Okay, and how long had that been, by the time you were
8 sitting down writing your statement, how long had it been
9 since your taxi had run off the road?

10 A Maybe an hour and a half, two hours, something like that.
11 I don't, I don't really remember exactly how long.

12 Q During that hour and a half to two hours, any sign of Mr.
13 Geathers?

14 A No.

15 Q Once he got out of the cab and walked up the road which
16 direction did he go?

17 A I'm not good in direction, but I know he didn't come in
18 the front of the cab, you know. It was he had to either go
19 behind or up the side, but he didn't come in the front of me
20 where I could see him because by that time it was daylight.

21 Q Okay, and you didn't seem him again after that; correct?

22 A No.

23 Q And so, an hour and a half to two hours later before
24 you're sitting down with the detective to write your
25 statement; correct?

Harold King - Cross by Defense

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1 A Correct.

2 Q Okay, so, at that point there's no threat from anybody?

3 A No.

4 Q Okay, and Officer Thacker gave you - he gave you as much
5 time as you needed to write out that statement?

6 A Yes.

7 Q Okay, did he rush you or pressure you in any way?

8 A No.

9 Q Okay, did he give you a chance to look back over it
10 before you signed it and gave it to him?

11 A I think. I think he did.

12 Q Okay, have you had a chance to see that statement since
13 you gave it to him?

14 A Yes.

15 Q Okay, have you reviewed it recently?

16 A Yes.

17 Q Okay, so, you're fairly familiar with what you wrote back
18 in 2001?

19 A Yes.

20 Q Okay, is there any mention in that statement of a hat on
21 the person that supposedly put a gun to your head?

22 A No.

23 Q Any mention of a pink towel or cloth covering the gun?

24 A No.

25 Q Okay, any mention of the type of clothing that the perso

Harold King - Cross by Defense

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1 was wearing?

2 A No.

3 Q Any mention of a shirt with Iowa written on the front?

4 A No.

5 Q Any mention of clothes of any kind?

6 A No.

7 Q Hat? I already asked you hat. Glasses?

8 A No.

9 Q Okay, you picked up this fare at what time?

10 A It was in the neighborhood between 12:30 and one o'clock
11 because ---

12 Q What did you tell or what did you write down for Officer
13 Thacker back in 2001 as far as the time?

14 A Okay, I only put the ending time. I didn't put down what
15 I - the time that I picked him up because, like I said, I was
16 thinking but what I was thinking some of it I didn't put down.
17 So, the time that I had down there was between four and five.

18 Q Okay, Mr. King, I'm going to show you what will be marked
19 as Defendant's Identification Two.

20 (Whereupon, Defendant's Exhibit Number Two [Statement]
21 marked for identification.)

22 Q And tell me if you recognize what that is.

23 A Yes, this is the statement that I wrote.

24 Q Okay, and would it refresh your memory about that
25 statement if you looked it over?

Harold King - Cross by Defense

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- 1 A Yeah.
- 2 Q I'm interested in the first line.
- 3 A Uh-huh, okay, now ---
- 4 Q What does that say in terms of the time? What did you
- 5 write?
- 6 A "I took a call in Goose Creek about four or five a.m."
- 7 Q Okay, so, you, what you wrote was, "I took the call at
- 8 four to five a.m."; correct?
- 9 A Yeah, yeah.
- 10 Q Okay, and that call would have come from who?
- 11 A It would have come from the dispatcher.
- 12 Q Okay, so, in 2001 an hour and a half after your taxi ran
- 13 off the road in Georgetown County when the event - would you
- 14 say the events were fresher in your mind back in 2001 an hour
- 15 and a half after they happened or today, nine years later?
- 16 A To be honest, it's, it's, having time to think about it,
- 17 it's, it's more clearer - I can - now.
- 18 Q Clearer now nine years later? Okay, so, now your
- 19 testimony today was that you got a call between 12:30 a.m. and
- 20 one a.m.; is that correct?
- 21 A That was the time that I received the call and the time
- 22 that I wrote is the time around I was in Georgetown.
- 23 Q I understand. Now, you were under oath and we had some
- 24 matters yesterday that we dealt with and you gave some
- 25 testimony yesterday under oath. Do you recall that?

Harold King - Cross by Defense

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1 A Yes.

2 Q And yesterday under oath the time, when asked about the
3 time, you said it was 11:30 p.m. Isn't that right?

4 A P.M., yeah, yeah.

5 Q Not 12:30 to one a.m.?

6 A No, yeah, 12, 11:30 to 12 p.m. It was, yeah, p.m.

7 Q Okay, 2001 you said four or five a.m. Yesterday you said
8 11:30 p.m. Today you're telling us 12:30 to one a.m. So,
9 when was it that you got this call?

10 A It was between 11:30, 12.

11 Q Between 11:30 and 12, okay.

12 A Yes.

13 Q And when you get a call, when you get a fare, how does
14 that work with your car? How did it work with North Area Taxi
15 then?

16 A Okay, when the call came over the radio it was that
17 someone was at this location to be picked up.

18 Q Okay.

19 A And if it was a cab in that area they told us where the
20 person was and what the fare was at that time and how to
21 proceed about getting the fare.

22 Q Okay, and what was the fare that they told you?

23 A The fare was \$28.

24 Q Now, you spoke to the police, in addition to writing out
25 a statement, you talked to Investigator Thatcher more than

Harold King - Cross by Defense

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1 that; correct? I mean, you had discussions with him about
2 everything that happened; didn't you?

3 A Yes.

4 Q Okay, and didn't you tell him that you called back to
5 dispatch, when you got, met Mr. Geathers and he wanted to go
6 out of Charleston that you contacted dispatch to see what the
7 fare was and they told you it would be \$50. Isn't that right?

8 A No, I did not.

9 Q Okay, you never told \$50?

10 A No.

11 Q Do you normally, does North Area Taxi normally operate i
12 North Charleston or does it typically take fares out of the
13 county?

14 A North Charleston and sometimes we get fare out of the
15 area.

16 Q Well, where out of the area?

17 A Johns Island, Goose Creek.

18 Q Those are both in Charleston County though; aren't they?

19 A Yeah.

20 Q Okay, so, a little bit unusual to have a fare that was
21 going to take you out of the county; wasn't it?

22 A Yes.

23 Q Okay, now, do you have the authority when you're driving
24 not now because you're not driving, but when you were driving
25 for North Area Taxi Cab Company, did you have the ability to

Harold King - Cross by Defense

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1 decide on your own what fares to take and where?

2 A Yes.

3 Q Okay, could you leave the county without letting dispatch
4 know where you were going?

5 A No.

6 Q Okay, do they keep - did your cab company keep track of
7 dispatches, where they sent who and where?

8 A Not to my knowledge.

9 Q Okay, now, but in this case you say the call came from
10 dispatch. So, how do they call you?

11 A It just came over the radio that anybody that was in that
12 area, any cab that was available in that area there was a fare
13 at this particular location and I responded to it.

14 Q In other words, you have a radio in the car. That's what
15 I'm getting at.

16 A Yes.

17 Q Kind of like a CB or short-wave radio.

18 A Yeah.

19 Q Okay, and it was in working order, obviously, because you
20 got the call.

21 A Yes, yes.

22 Q Now, you've told the jury today what happened after you
23 got that call.

24 A Yes.

25 Q So, I'm assuming that was the last call you got that

3

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1 night.

2 A No.

3 Q From dispatch? You got other calls?

4 A Yes.

5 Q Okay, so, after that you got other calls but you didn't
6 respond to any of the calls; did you?

7 A I respond to the one that came from North Charleston
8 Police.

9 Q Okay, and what time was that?

10 A That was, that was the call that I picked up at one
11 o'clock.

12 Q Okay, now, when you went off the road up in Georgetown
13 County were you able after Mr. - you say Mr. Geathers left,
14 were you able to turn, to start the car again?

15 A Yeah, the car never cut off.

16 Q Okay, so, although you couldn't get it back up on the
17 road, the car was still running?

18 A Yes.

19 Q Radio still working?

20 A We - I was too far out, out of the area.

21 Q Okay, could you pick up anybody else?

22 A No.

23 Q Could you not like change a dial and call any other ---

24 A No.

25 Q Carry a cell phone with you at that time?

Harold King - Cross by Defense

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1 A No.

2 Q Okay, how long was it before someone came by? You say
3 someone came by and that's how this got reported to the
4 police; correct?

5 A Yes.

6 Q How long was that?

7 A It was about 30, 45 minutes.

8 Q Okay.

9 A I can't, I can't really say exactly what time.

10 Q Did you make any effort to walk in the direction opposite
11 Mr. Geathers to see if you could locate a house or someone to
12 ask for help before this person came by?

13 A No, really I was - I didn't even know where I was. I was
14 still shook up. I just sat there.

15 Q All right.

16 A I sat there and cried, that's what I did.

17 Q Now, one moment. When did you - when would you say it
18 was that you ran off the road? What time of day was that?

19 A It was morning.

20 Q When in the morning? Daylight?

21 A Yeah.

22 Q Okay, when's the last time you got gas before you stopped
23 at that gas station? Do you remember?

24 A No, I don't remember. I don't remember when I got gas
25 before that.

Harold King - Cross by Defense

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- 1 Q When you got to that gas station, you got out; correct?
2 Went inside to pay for the gas; isn't that right?
- 3 A Yes.
- 4 Q Okay, Mr. Geathers initially was still at the car. Is
5 that right?
- 6 A Yes.
- 7 Q Okay, and so, you were out of the car and away from Mr.
8 Geathers at that point; correct?
- 9 A Yes.
- 10 Q Okay, and there was somebody inside?
- 11 A Yes.
- 12 Q Okay, was there anybody else inside?
- 13 A No.
- 14 Q So, once she didn't, didn't seem to understand what you
15 were trying to tell her, what effort did you make to make sur
16 she understood?
- 17 A Mr. Geathers started walking toward me with the gun in
18 his hand. She ---
- 19 Q Outside though; correct?
- 20 A Yep, but - and she had went in the office.
- 21 Q Why didn't you go in the office?
- 22 A Because it was behind the counter.
- 23 Q Right.
- 24 A And I couldn't get behind the counter.
- 25 Q All right, but you were inside the store and he was

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1 outside the store. Is that right?

2 A Right.

3 Q Okay, you also had another chance. You got out of the
4 car - cab when you were in Pineville at that house. Is that
5 right?

6 A Yes.

7 Q Okay, you spoke to the police again a day or two after
8 you first gave your written statement; correct?

9 A Correct.

10 Q Okay, and they came down, spoke to you and showed you
11 these photographs; right?

12 A Correct.

13 Q Okay, did you tell them there was anything you needed to
14 add to your statement, that you didn't get it all right
15 because you were upset; and so, you needed to add some detail
16 to that or things you now remembered?

17 A No.

18 Q Okay, and in fact, from August of 2001 until today you
19 haven't ever corrected or added that, to that statement; have
20 you?

21 A No.

22 Q Other than coming into court and adding some details?

23 A That's it.

24 MR. FOX: The Court's indulgence, Your Honor.

25 THE COURT: All right.

Harold King - Cross by Defense

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1 MR. FOX: Thank you, Your Honor, those are all the
2 questions that I have.

3 THE COURT: All right, redirect?

4 MS. COTÉ: No, Your Honor.

5 THE COURT: All right, you may step down. Let me see
6 the attorneys for a second. Mr. Fox.

7 (Whereupon, a bench conference is held in the presence
8 but out of the hearing of the jury.)

9 THE COURT: All right, Ms. Coté, any other witnesses?

10 MS. COTÉ: Your Honor, at this time the State of
11 South Carolina rests its case.

12 THE COURT: All right, all right, ladies and gentlemen
13 of the jury, the State has presented their case in chief in
14 this case, and with it being 12:30 it's a good time for us to
15 go ahead and break for lunch. It's a good stopping point.
16 So, I'm going to excuse you to go to lunch. Please be back in
17 the jury room at 2:00. That'll give you an hour and a half to
18 get lunch and get back and we'll try to get to you as quickly
19 as we can after 2:00. I remind you, please do not discuss the
20 case with anyone, even among yourselves at this point in time.
21 Don't conduct any independent investigations. Don't try to go
22 on the internet or anything about that. I hope everybody has
23 a good lunch and we'll see you back at 2:00. Thank you very
24 much. Everybody else please remain seated while the jury's
25 excused.

Questioning Re: Rights

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1 (Whereupon, the following takes place outside the
2 presence of the jury.)

3 THE COURT: All right, anything further from the State
4 before we break for lunch?

5 MS. COTÉ: No, Your Honor.

6 THE COURT: Anything from the Defendant?

7 MR. FOX: None, Your Honor. We'll have motions. If
8 Your Honor pleases I'd like to do that when we return from
9 lunch and put on the record our motions at that time.

10 THE COURT: Okay, all right, we can do that. Before
11 we break for lunch and I'm not going to ask your client at
12 this point in time but I do want to go ahead and go over his
13 rights to testify so that he'll have an ample opportunity to
14 discuss this ---

15 MR. FOX: Yes, sir.

16 THE COURT: --- with you. Hold for one second. All
17 right, sir, you're Craig Geathers.

18 MR. GEATHERS: Yes.

19 THE COURT: All right, let's go ahead and put him
20 under oath, please.

21 (Craig Geathers is sworn by the Clerk.)

22 THE COURT: All right, all right, Mr. Geathers, at
23 this time I'm going to explain to you certain rights that you
24 have and if you do not understand anything I say please let me
25 know. If you want me to explain anything in more detail,

Questioning Re: Rights

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1 please let me know. Do you understand that?

2 MR. GEATHERS: Yes, sir.

3 THE COURT: All right, we've now reached the stage of
4 the trial where the State has completed their portion and the
5 Defense, if the Defense chooses, can present a defense in this
6 case. You have the right to claim the protections given to
7 you by the Fifth Amendment to the Constitution of the United
8 States. This amendment states in part that no person shall be
9 compelled in any criminal case to be a witness against
10 himself. This means that you cannot be required to testify in
11 this case. You have the right to testify on your own behalf;
12 however, no one can make you testify. This is a personal
13 right to you and no one can waive this right except for you.
14 If you decide to testify, you will be subject to the same
15 rules that govern other witnesses and you may be examined and
16 cross examined on any relevant issue in this case. In
17 addition, if you have any convictions involving dishonesty or
18 false statement or for crimes punishable by imprisonment for
19 more than one year and this Court determines that the
20 probative value of admitting the evidence outweighs its
21 prejudicial effect to you, the Solicitor will be able to
22 introduce your record to attack your credibility. If you
23 decide to testify, the decision on your part must be freely,
24 voluntarily and intelligently made with knowledge of the
25 protections given to you by the Fifth Amendment and the

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1 consequences of your decision to testify. If you decide not
2 to testify, I will instruct the jurors that they cannot give
3 the fact that you did not testify any consideration whatsoever
4 and that there is to be absolutely no prejudice to you because
5 you did not testify. It is left entirely up to you whether or
6 not you testify. You may talk to your attorney, your family
7 and friends or anyone else, but the final decision will be
8 left entirely up to you. Now, do you understand what I've
9 explained to you?

10 MR. GEATHERS: Yes, sir.

11 THE COURT: All right, do you have any questions about
12 what I've explained to you?

13 MR. GEATHERS: No, sir.

14 THE COURT: All right, we're going to go ahead and
15 break for lunch and that'll give you some opportunity to speak
16 with your attorney or whomever you want to talk to about your
17 right to testify, but when we come back after lunch I will ask
18 you at that point in time whether or not you wish to testify
19 in this case. Okay?

20 MR. GEATHERS: Yes, sir.

21 THE COURT: All right. All right, thank you very
22 much. Let's go ahead and break for lunch. Let's be back at
23 two o'clock; okay?

24 MR. FOX: Thank you, Your Honor.

25 THE COURT: All right, thank you very much.

Motions

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1 OFF THE RECORD

2 (On the record.)

3 (Whereupon, the following takes place outside the
4 presence of the jury.)

5 THE COURT: All right, Mr. Fox, any motions?

6 MR. FOX: Yes, Your Honor, the State has rested,
7 concluded their case and I would make a motion for a directed
8 verdict on both charges, both as to armed robbery and
9 kidnapping. The Solicitor has not met or proved, presented
10 evidence of each element of each crime; and therefore, as a
11 matter of law they should not go to the jury, Your Honor.

12 THE COURT: All right, your motion's noted; however,
13 I'm going to deny your motions. I think they at least
14 presented enough to get it to a jury. Anything else?

15 MR. FOX: No, Your Honor, at this time I believe
16 Your Honor - we need to - the Court needs to query of Mr.
17 Geathers whether he wishes to testify or not.

18 THE COURT: All right, Mr. Geathers, if you'd please
19 stand. All right, if you'd raise your right hand, please.

20 (Whereby, Craig Geathers is sworn by the Court).

21 THE COURT: All right, you may put your hand down. Do
22 you recall the charge and instructions and explanation I gave
23 you prior to breaking for lunch regarding your right to
24 testify in this case?

25 MR. GEATHERS: Yes, sir.

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1 THE COURT: That you have the right to testify if you
2 wish to testify; however, under the Constitution of the United
3 States, you cannot be compelled to testify in this case. You
4 understand that?

5 MR. GEATHERS: Yes.

6 THE COURT: Do you have any questions regarding those
7 instructions?

8 MR. GEATHERS: Maybe, yeah, do I have to give an answer
9 now?

10 THE COURT: Well, we need to get an answer from you
11 outside the presence of the jury. Whether or not you want to
12 give your answer now, I'll leave that up to you and your
13 attorney as to when you want to give your answer. I don't
14 know that it's imperative that you give it at this point in
15 time; however, we do need to know before you take the stand,
16 you will need to answer outside the presence of the jury
17 whether you wish to testify or not. Okay?

18 MR. GEATHERS: I understand that.

19 THE COURT: All right, well, let me go over this again
20 with you right quick since there was some hesitation to make
21 sure that you understand your rights and if you have any
22 questions make sure you let me know what your questions are.
23 Okay?

24 MR. GEATHERS: Yes, sir.

25 THE COURT: All right, now, I remind you that you have

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1 the right to claim the protections given to you by the Fifth
2 Amendment to the Constitution of the United States which
3 states in part that no person shall be compelled in any
4 criminal case to be a witness against himself. This means
5 that you cannot be required to testify in this case and you
6 have the right to testify on your own behalf; however, no one
7 can make you testify. This is a personal right and no one can
8 waive the right except for you. If you decide to testify, you
9 will be subject to the same rules that govern other witnesses.
10 You may be examined and cross examined on any relevant issue
11 in the case. In addition, if you have any convictions
12 involving dishonesty or false statement or for crimes
13 punishable by imprisonment for more than one year and I
14 determine that the probative value of admitting the evidence
15 outweighs its prejudicial effect, then the Solicitor will be
16 able to introduce your record to attack your credibility.
17 Now, if you decide not to testify, this decision on your part
18 or whether or not you testify or not testify, it is your
19 decision and must be given freely, voluntarily and
20 intelligently made.

21 If you decide not to testify, I will instruct the jurors
22 that they cannot give the fact that you did not testify any
23 consideration whatsoever and that there is to be absolutely no
24 prejudice to you because you did not testify. It is left
25 entirely up to you whether or not you testify. You can talk

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1 to your lawyer, your family, anybody you want to but the final
2 decision is yours. Do you understand that?

3 MR. GEATHERS: Yes, sir.

4 THE COURT: Do you have any questions you want to ask
5 me about that?

6 MR. GEATHERS: No, sir.

7 THE COURT: All right, let me give you a few seconds
8 to speak with your attorney to see if now's the time you want
9 to go ahead and let me know what you want to do. Okay?

10 MR. GEATHERS: I wish not to give an answer today because
11 I want to like talk to my family members.

12 THE COURT: Well, no, you're going to have to give an
13 answer today because the trial of the case is not going to
14 stop because of that. Okay? So, I'll give you an opportunity
15 to speak with whoever you want to, but we're not going to
16 continue the case for you to decide that. You understand?

17 MR. GEATHERS: Yes, I understand.

18 THE COURT: Okay, all right, so, before we bring the
19 jury in, let me give you an opportunity to speak with your
20 attorney and anybody else that is here that you want to speak
21 to. Okay? All right, let's take just a few minutes.

22 MR. FOX: Thank you, Your Honor.

23 (Mr. Fox and Mr. Geathers confer.)

24 MR. FOX: Your Honor, I believe Mr. Geathers is
25 ready to give his answer.

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1 THE COURT: All right, Mr. Geathers, have you had an
2 opportunity to speak with your attorney and whoever is present
3 here that you wish to speak with regarding your right to
4 testify? Have you had an opportunity?

5 MR. GEATHERS: I had a brief moment, yes.

6 THE COURT: Okay, do you have any questions regarding
7 your rights under the constitution or your - whether or not to
8 testify or not?

9 MR. GEATHERS: Yes.

10 THE COURT: All right, what are your questions?

11 MR. GEATHERS: Like I said, do I have to give it today,
12 as I'm, you know, has to be, has to be, has to be done today,
13 at this moment?

14 THE COURT: Yes, yes, sir. We're in the trial of the
15 case. So, whether or not you testify - in other words, if
16 you're going to testify, you're going to testify today so
17 that's why I need to know your answer ---

18 MR. GEATHERS: Oh, okay.

19 THE COURT: --- as to whether or not you wish to
20 testify is because now we're in the trial of the case and this
21 is the time in the trial when you present your defense. Now,
22 as part of your defense, if you choose to present a defense,
23 may or may not include your testimony; and so, that's why I
24 need to know at this time whether or not you wish to testify.

25 MR. GEATHERS: The reason why I hesitate because I was

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1 just notified of this trial on Thursday from my lawyer and we
2 have not prepared for this trial very well. So, I just was
3 figuring that I could give the answer tomorrow morning, so. I
4 wasn't trying to be, you know.

5 THE COURT: Okay, no, sir, you're going to, you're
6 going to need to give your answer today.

7 So, I need to know your answer. Do you wish to testify
8 or not?

9 MR. GEATHERS: No.

10 THE COURT: Okay, all right. Is that your decision
11 and is that what you want to do?

12 MR. GEATHERS: That's my decision.

13 THE COURT: All right, thank you very much. You may
14 be seated.

15 All right, Mr. Fox, anything else before we proceed?

16 MR. FOX: Just one.

17 THE COURT: All right.

18 (Mr. Geathers and Mr. Fox confer.)

19 MR. FOX: Your Honor, I have informed Mr. Geathers,
20 I think he needs to have this information. He has given me
21 the names of witnesses to subpoena. I have spoken with -
22 there are three witnesses, two I have spoken with, one I have
23 been unable to contact in any way. After speaking with them,
24 and even based on what Mr. Geathers tells me I might expect to
25 hear from these witnesses, it's my opinion as a lawyer and my

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1 decision as a trial strategy to not call these witnesses. So
2 I've informed Mr. Geathers of that. I know that he wishes
3 that I do so and I have ---

4 MR. GEATHERS: Very much so.

5 MR. FOX: Let me finish, you'll have your chance,
6 and have, in fact, made the effort to contact, subpoena in
7 attempt to get them there. One of them, Ms. Scarborough, the
8 lady that he just spoke to was one of those witnesses, but I
9 know that's something he does wish to do in terms of having
10 them testify and he, I believe, needs to have that
11 information, certainly, in making his own decision. So,
12 although we discussed that before, I wanted to make sure he
13 understood that I did not intend to call these other
14 witnesses.

15 THE COURT: All right.

16 MR. FOX: And if, in fact, he does not testify,
17 we'll proceed to argue and charging.

18 THE COURT: All right, let's go ahead and put on the
19 record, who is it he wants you to?

20 MR. FOX: The first was, and I want to make sure I
21 have her name, she's here. Is it Erma Scarborough?

22 MS. AKLAND: Akland [spelled phonetically].

23 MR. FOX: Please.

24 MS. AKLAND: Erma Scarborough Akland.

25 MR. FOX: Ms. Erma Scarborough Akland, Erma with an

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1 E I believe. She is Mr. Geathers' aunt. This is the lady
2 that he was staying with in Georgetown when he came down from
3 New York. This would be the home that the police when they
4 went looking for Mr. Geathers when he became a suspect, that's
5 the home they went to.

6 THE COURT: Okay, so, she is under subpoena.

7 MR. FOX: And she is present.

8 THE COURT: At the request of the client, she's
9 present but you choose not to call her.

10 MR. FOX: That's correct and I would also say I've
11 spoken to her last week a couple of times and again this week
12 arranging her to be here and talked to her and without going
13 into all of the details, frankly, I don't think she recalls.
14 I don't think she can say anything that would be helpful in my
15 opinion to the Defendant.

16 The other one, the next witness is Mr. Bryant with a T,
17 Bryant Vereen. He is Ms. Akland's son, Mr. Geathers' first
18 cousin. Back in 2001, he did live with his mother; however,
19 at this specific timeframe, August, early August of 2001, he
20 was not. He was off visiting other relatives in North
21 Carolina. He was subpoenaed, or at the least the subpoena was
22 sent to Horry County. He now lives in Myrtle Beach. We sent
23 a subpoena to Horry County. They have not, when we checked at
24 the lunch hour today, they had not yet accomplished service.
25 I was able to speak to Mr. Vereen, our intern Mr. Calhoun also

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1 spoke to Mr. Vereen, and again after speaking with him, I do
2 not believe he can add any information that's beneficial to
3 Mr. Geathers.

4 The third witness - you'll have your chance to speak to
5 the Judge. The third witness is Ms. Ruby Allman. She is the
6 mother of Betty McCray who was here testifying this morning.
7 Ms. Allman lives in Pineville at that same house that we had
8 testimony about. I also attempted to contact her. The phone
9 number, one number I had was disconnected, another I was
10 unable to make contact, sent a subpoena at the Defendant's
11 request to the Berkeley County Sheriff's Office. They - spoke
12 with them also at the lunch hour and to see if they had been
13 able to accomplish service, was told at that time that they
14 had not. I gave them a little bit further information because
15 I understood she had a or worked at least a store just down
16 the road from her residence and requested that they check down
17 the road to see if she might be there. They were to attempt
18 that and then get back. I have not heard back. Ms. Allman,
19 have not spoken to Ms. Allman, based on what the Defendant
20 believes she may testify or what she would - the subject of
21 her testimony, again, I don't believe would be a witness I
22 would intend to call as part of my trial strategy, but I have
23 not actually spoken to Ms. Allman.

24 THE COURT: All right, all right, Mr. Geathers, if
25 you'd please stand. I understand that you have asked your

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1 attorney to subpoena Ms. Erma Scarborough Ackland, Mr. Bryant
2 Vereen and Ms. Ruby Allman, that you wish to have these
3 individuals subpoenaed and called as witnesses. Is that
4 correct?

5 MR. GEATHERS: Yes, sir.

6 THE COURT: All right, now, according to your
7 attorney, he does not intend to call them and does not wish to
8 call them as witnesses. While you have the right and the
9 exclusive decision as to whether or not you testify or not
10 testify, the decision as to who else is to be called as a
11 witness is within the purview of your attorney. He is the
12 attorney. He is the one representing you in this case and he
13 is the one that can decide how to try the case, who to call as
14 witnesses and who not to call as witnesses with the one
15 exception of your right to testify. In other words, if he
16 does not want you to testify, you can still testify even if he
17 doesn't want you to. If he wants you to testify, you can
18 still refuse to testify if you don't want to; however, that
19 applies only to you. These other witnesses are up to him as
20 to whether or not to call them to testify because he is the
21 attorney. He's had the legal training and he can judge the
22 value of their testimony as it relates to this trial strategy
23 that he is using in this case. Do you understand that?

24 MR. GEATHERS: No, sir.

25 THE COURT: Okay, I guess the point I'm trying to make

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1 to you is that you have the constitutional right to testify or
2 not to testify. You do not have a constitutional right to
3 compel your attorney to call people that he does not want
4 called or to prohibit him from calling people that he wants to
5 call. So, having said that, I am not going to require him to
6 call these witnesses since he chooses not to call them as
7 witnesses in this case. I tell this to you simply because it
8 may affect your decision as to whether or not you wish to
9 testify in this case. Do you understand that?

10 MR. GEATHERS: No.

11 THE COURT: Okay, knowing that none of these three
12 people: Ms. Akland, Mr. Vereen or Mr. Allman will not be
13 called as witnesses in the defense of this case, do you still
14 wish to testify in this case?

15 MR. GEATHERS: If I change my mind, will they still be
16 subject to testify?

17 THE COURT: No, as I understand Mr. Fox is not going
18 to call them to testify.

19 MR. GEATHERS: So, why were their name put on the
20 subpoena list?

21 THE COURT: I understand from him they were put on
22 there because you requested that he put them on there.
23 Oftentimes you subpoena people because something might occur
24 during the State's case which led him to believe that he may
25 want them to testify, but after having heard the State present

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1 their case, he does not see where their testimony would be
2 pertinent in the defense of yours or in the presentation of
3 your defense. Oftentimes, attorneys put people on subpoena
4 lists or have them appear not because they expect to call them
5 but because they don't know whether they're going to call them
6 or not until the State has presented its case. So, I don't
7 know why Mr. Fox put them on the witness list other than my
8 experience tells me that often you have witnesses just in case
9 you want to call them in response to something that the State
10 presented in its case in chief. So, all I can tell you is
11 that at this point in time ---

12 MR. GEATHERS: One is here right now.

13 THE COURT: That's correct and Mr. Fox says he has
14 spoken with her and does not feel that her testimony would be
15 beneficial to you in your defense.

16 MR. GEATHERS: That is just his opinion.

17 THE COURT: Well, he's ---

18 MR. GEATHERS: I don't know what he said to her or what
19 she said to him.

20 THE COURT: Yes, but he's the attorney. All I can,
21 all ---

22 MR. GEATHERS: And this is my case. I'm on trial for
23 serious charges.

24 THE COURT: That's right, and you have a court-
25 appointed attorney and that's why we've appointed you an

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1 attorney that has the legal experience and the legal knowledge
2 and knows the procedures of a criminal trial better than you
3 do and for that reason that is why you have a constitutional
4 right to have an attorney is so that you will not be
5 prosecuted or that your lack of knowledge of the legal
6 profession and the legal trial strategies will not work as a
7 prejudice to you. You've got an attorney that is as equally
8 competent and has the same knowledge and experience as those
9 prosecuting you so that he can provide you with a defense.
10 All I can tell you is that he has chosen not to call any of
11 these people as witnesses; and therefore, I need to know
12 whether or not you wish to testify in this case.

13 MR. GEATHERS: I gave my answer already.

14 THE COURT: All right, the Defendant chooses not to
15 testify in this case.

16 All right, anything further?

17 MR. FOX: No, Your Honor.

18 THE COURT: All right, do you all, I've got my jury
19 charges. Like I said and I told you in our earlier conference
20 now I need to delete portions that would have been inserted
21 had Mr. Geathers testified and I've got to add the others
22 since he has chosen not to testify. Do you all want those
23 instructions before you do your closing arguments or do we
24 want to proceed with closing arguments at this time?

25 MR. FOX: If I could, Your Honor, I would like to,

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1 just a moment.

2 THE COURT: Okay, all right, it'll only take me about
3 probably another ten minutes to get these in final fashion and
4 then I'll get them out to you. Okay?

5 MR. FOX: Thank you, Your Honor.

6 THE COURT: Yes, ma'am?

7 MS. COTÉ: Your Honor, if I may bring up one other
8 issue, I've noticed that the foreperson on the jury has been
9 taking notes.

10 THE COURT: Oh, has he?

11 MS. COTÉ: Yes.

12 THE COURT: Okay.

13 MS. COTÉ: I'm not sure if you want to address that
14 with them or how you want to handle it. I just wanted to
15 bring that to the Court's attention.

16 THE COURT: Yeah, I think I need to address, address
17 the note-taking with them, but we'll do that when I bring -
18 when we bring them out and I'll start, I'll instruct them on
19 that at the beginning before we start our closing arguments.
20 Okay?

21 MS. COTÉ: Okay.

22 MR. FOX: And just so I know, what will your
23 instruction be, Your Honor?

24 THE COURT: My instructions, generally, is that I do
25 permit the taking of notes; however, the taking of notes is

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1 personal to each individual juror. Some people take notes
2 better than others. Some people recall better without taking
3 notes; and so, whoever is taking notes, they are permitted to
4 do so; however, it is exclusively for the purpose of
5 refreshing his or her memory or helping him or her recall the
6 testimony and it is personal to them and is not to be used,
7 and let me see how I've got it written down. Generally, it is
8 just because a person has taken a note does not mean that that
9 is more accurate than somebody may recall testimony who has
10 not taken a note because some people are better note takers
11 and it's generally to that effect. I can, I can give you a
12 more definite because I do write it out that generally that
13 says that note taking is personal to the individual to refresh
14 his or her memory and is not used to show that that particular
15 juror recalls the testimony any better than someone else who
16 does not take notes.

17 MR. FOX: Could we also - could I also request the
18 Court to - I'll leave it up to the Court, language such as,
19 you know, the official record or the official - we have an
20 official record that would accurately reflect what a
21 particular witness said, something to that effect so that they
22 know there's a source. I don't want to encourage them
23 necessarily to start asking to replay vast portions of
24 testimony, but that they know there is an official source
25 available if they have those kind of questions.

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1 THE COURT: Well, I don't want to get in - you know, I
2 think, I think I'm just going to leave it the way I have it.

3 MR. FOX: That's fine, Your Honor.

4 THE COURT: Okay? All right, let's take about a ten
5 minute break. I'll be back in just a second.

6 MS. COTÉ: Thank you.

7 OFF THE RECORD

8 (On the record.)

9 (The following takes place outside the presence of the
10 jury.)

11 MR. FOX: I believe Mr. Geathers has one other point
12 he'd like to, perhaps about testifying, while we're still in
13 here. You may stand and speak.

14 THE COURT: All right, Mr. Geathers, let me hear from
15 you.

16 MR. GEATHERS: Okay, sorry, Your Honor, for - I was just
17 upset about the subpoena part.

18 THE COURT: Oh, I understand. I understand and don't
19 worry about that at all. I mean, it's, it's - that's no
20 reflection on you or the Court or anything like that. I know
21 a lot of times people get at odds when they want to do
22 something a certain way and their attorney wants to do it the
23 other way, but the reason that we do have an attorney
24 appointed to represent you is because Mr. Fox is educated on
25 trial experience, trial strategy, burdens of proof and things

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1 of that nature. So, don't worry about that. Anything else?

2 MR. GEATHERS: You know, I did - I do worry a lot
3 because I weigh very heavily on that, the subpoenas, but I
4 don't see where I can get it done my way now. So, it's best I
5 take the stand because I need, I need to - some more to be
6 added to this trial.

7 THE COURT: All right, so, you do want to testify in
8 this case?

9 MR. GEATHERS: Yes, I have to.

10 THE COURT: All right.

11 MR. GEATHERS: He's forced me to.

12 THE COURT: Say that again.

13 MR. GEATHERS: I say yes I do have to.

14 THE COURT: Okay, has anybody forced you to testify?

15 MR. GEATHERS: No, sir.

16 THE COURT: All right, has anybody coerced you into
17 testifying?

18 MR. GEATHERS: No.

19 THE COURT: All right, are you testifying voluntarily?
20 Is this what you want to do?

21 MR. GEATHERS: Yes, this is what I want.

22 THE COURT: Okay, all right, well, then we'll go ahead
23 and bring the jury in and start the defense.

24 Anything before we bring the jury in?

25 MR. FOX: Not from the Defendant, Your Honor.

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1 MS. COTÉ: No, Your Honor.

2 THE COURT: All right, all right, let's go ahead and
3 bring the jury in.

4 (Whereupon, the following takes place in the presence of
5 the jury.)

6 THE COURT: All right, ladies and gentlemen, welcome
7 back. I hope everyone had a good lunch.

8 The State has presented its case and it is now time for
9 the Defense to present their case if the Defendant wishes to
10 present a case, and as I understand in this situation, they
11 are going to.

12 Before we proceed, however, it was brought to my
13 attention, and I didn't recognize this or not, but that one or
14 more of the jurors might be taking notes in this case and what
15 I need to instruct you at this point in time is if you do wish
16 to take notes then that is permissible. However, note taking
17 is personal to each individual juror. In other words, some
18 jurors can take notes better than others. Some jurors can
19 recall things better without taking notes. So, the sole
20 reason I will permit anyone to take notes who wishes to take
21 notes is to refresh your memory individually. The fact that
22 someone has taken a note does not mean that that person heard
23 the testimony or interpreted the testimony any better than a
24 person who did not take a note. So, the sole purpose of
25 taking a note is to refresh your memory as to something that

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1 you might feel is important. There again, it is not required
2 that you take notes. I leave it up to each individual juror
3 as to whether or not you wish to take a note, but just keep in
4 mind that if you do takes notes it is not to be used to
5 persuade other jurors that you recall something better than
6 they do because some people listen better than others do, some
7 people takes notes better than others do. If you do decide to
8 take notes, I ask that if you do so you do not let your note
9 taking interfere with your attention that you need to give to
10 the witnesses when they testify. Okay?

11 All right, Mr. Fox.

12 MR. FOX: Thank you, Your Honor. The defense would
13 call Craig Geathers.

14 THE COURT: All right, Mr. Geathers, if you'd come
15 forward please.

16 Whereupon, Craig Geathers was called to the stand, duly
17 sworn by the clerk and testified as follows:

18 THE CLERK: Thank you. Please be seated and state
19 your name for the record, please.

20 MR. GEATHERS: My name is Craig Geathers.

21 DIRECT EXAMINATION

22 BY MR. FOX:

23 Q Mr. Geathers, where do you live?

24 A I live in New York.

25 Q How long have you lived in - New York City?

Craig Geathers - Direct by Defense

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1 A All my life.

2 Q Is that in New York City?

3 A Yes, sir.

4 Q Okay, and who do you live with in New York City?

5 A My mother.

6 Q And you're how old, sir? How old are you?

7 A I'm 44.

8 Q Your whole life you've lived in New York City? You need
9 to answer yes or no please for the court reporter.

10 A Yes, sir.

11 Q Thank you. Do you have relatives in Georgetown County?

12 A Yes, I do.

13 Q Who are, who are your relatives here?

14 A It's my aunt.

15 Q And her name, please?

16 A Erma.

17 Q What's her last name?

18 A She got married. I go by Scarborough because that's our
19 family name.

20 Q But she has another name since she remarried?

21 A Yes.

22 Q Okay, do you come down - over the years have you come
23 down and visited your aunt, visit your aunt down here in
24 Georgetown County?

25 A In my whole life I've visited her twice.

Craig Geathers - Direct by Defense

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1 Q Okay, when was the last time you came to visit your aunt?

2 A 2001.

3 Q Okay, do you recall about when during the year that you
4 came down?

5 A It was warm, so, spring, summer.

6 Q Okay.

7 A More, more like spring.

8 Q Okay, and was this around the time that you had been
9 dating Ms. Betty McCray?

10 A Before, in between.

11 Q Okay, and you heard Ms. McCray testify this morning that
12 you all had had a relationship beginning the end of 2000. Is
13 that correct?

14 A We broke up like in July.

15 Q Okay, so, you were still together when you came down
16 early in 2001?

17 A Yes, sir.

18 Q Okay, and where was Ms. McCray? Was she in South
19 Carolina or still in New York?

20 A At the time when I came down here, we both agreed to get
21 an apartment together and we lived - I was going back and
22 forth from here to New York with, you know, paying the bills
23 and everything. So, we both lived together for a short period
24 of time.

25 Q Where was that?

Craig Geathers - Direct by Defense

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1 A It's over there in North Charleston.

2 Q Does she have relatives in South Carolina?

3 A Yes, she does.

4 Q Who's that?

5 A Her mother.

6 Q And where does her mother live?

7 A Her whole family, her brothers. She was born and raised
8 here.

9 Q Was there a time where you all didn't live together down
10 here in South Carolina but you were still here?

11 A Yeah, that's the time that I left her and went to stay
12 with my aunt before I went back to New York.

13 Q Okay, and your aunt's here in the City in Georgetown?

14 A Yes, sir.

15 MS. COTÉ: Your Honor, I ask that you advise Mr. Fox
16 not to lead his client. This is a direct examination.

17 THE COURT: Okay, I'm going to allow the questioning
18 so far. I don't think it's gone out of bounds yet. All
19 right, Mr. Fox.

20 Q How long were you in South Carolina? Let me ask you this
21 first, at some point did you return to New York City?

22 A Yes, quite a few times I went home because I'm the only
23 child and I went home to see about my mother.

24 Q But how - what I meant was did you at some point return
25 to New York and stay there?

Craig Geathers - Direct by Defense

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1 A Yes, after my last stay here I went back home to stay
2 period, yes.

3 Q Okay, and that was when?

4 A Short, like beginning of August because my mother
5 birthday is August 7th and I went home right before that.

6 Q Okay, so, you were here several months in South Carolina?

7 A Yes, sir, I believe so.

8 Q Okay, were you employed during that time?

9 A Yes, I did have a job.

10 Q What were you doing?

11 A I was working at a call center over in North Charleston.

12 Q And was that a full-time employment, part-time?

13 A It was full-time.

14 Q Okay, any other work while you were down here?

15 A That's the only job I had.

16 Q Okay, now, did that employment continue up until you
17 returned to New York to stay?

18 A I left - I took a leave of absence because it wasn't
19 paying much and I went back home because I decided to either
20 stay or come back or one of the two. So, I decided to go bac
21 home and stay.

22 Q Okay, what type of work do you do in New - are you
23 employed in New York?

24 A Yes.

25 Q What kind of work do you do there?

Craig Geathers - Direct by Defense

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1 A I'm a certified tax preparer.

2 Q How long have you done that type of work?

3 A I got my certificate in year of 2000, took the course in
4 '99.

5 Q Okay, and you've continued to do that for the last nine
6 years or so?

7 A Yes, I still do that to - up until today.

8 Q Now, you've heard - you know why you're on trial here
9 today don't you?

10 A Yes, sir.

11 Q Okay, and you've heard different police officers and Mr.
12 King testify about what happened on August 5th, 2001?

13 A Yes, sir.

14 Q Okay, and that was during the time when you were still in
15 South Carolina. Is that correct?

16 A Yes, sir.

17 Q Okay, did you have any occasion to be in Mr. King's cab
18 on that evening?

19 A Yes, I was in his cab.

20 Q How did that occur?

21 A Well, I took one cab from my aunt's house to North
22 Charleston and I went over to like my old job because I could
23 go in there and make phone calls because I wanted to make a
24 couple of calls and then I was looking for a gift for my
25 mother and then I decided that I had some information to give

Craig Geathers - Direct by Defense

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1 to Ms. Betty McCray. So, I got a call - I called a cab to go
2 out there to give the information before I went back to my
3 aunt's house because I couldn't find a gift for my mother out
4 here.

5 Q Let me stop you there just so I can keep track. So, you
6 took a cab from Georgetown to North Charleston; correct?

7 A Yeah, I called from the house.

8 Q Okay, and at some point you wanted to leave North
9 Charleston and then go where?

10 A I wanted to get the information to the girl and then I
11 just - it was getting late. So, I had to get back home
12 because I don't stay out late.

13 Q So you call a cab - did you?

14 A I called North Area, the cab company to take me to St.
15 Stephen and I told him we were going to take this, go there
16 and then back to Georgetown and he agreed to that.

17 Q What time of day or night was that?

18 A It was, it was day but going on evening but it wasn't
19 late. It was good eight or nine o'clock.

20 Q Still light out?

21 A Yeah, just barely light. It was getting dark.

22 Q Okay, any, any other passengers?

23 A I was the first to get in but he had got a call and he
24 got - he asked me could he get - pick up some more fares
25 before we get out there to St. Stephen. I said I wasn't in m

Craig Geathers - Direct by Defense

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1 rush, okay. So he went and did that. He picked up a couple
2 of fares.

3 Q And were those Charleston area fares?

4 A It was right in the area. He was like five blocks or
5 whatever. It wasn't that far.

6 Q Short little trips?

7 A It was very short, yeah.

8 Q Okay, at some point then did you leave North Charleston
9 and head towards St. Stephen?

10 A Yes, we did.

11 Q Okay, was there anyone in the cab besides yourself and
12 Mr. King?

13 A No.

14 Q And where were you in the cab?

15 A In the backseat.

16 Q Okay, any lights on in the cab?

17 A No.

18 Q By this time was it dark or still somewhat light?

19 A It was dark.

20 Q All right, so, Mr. King's in the driver's seat at that
21 point.

22 A Yes, he was.

23 Q Okay, did you all talk on the way?

24 A Yeah, we had conversations because it's a good piece,
25 it's a good ride.

Craig Geathers - Direct by Defense

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- 1 Q And when you got to St. Stephen what happened?
- 2 A When we got into the lady front yard ---
- 3 Q What lady?
- 4 A Okay, I'm sorry, Ms. Allman.
- 5 Q And who is Ms. Allman?
- 6 A That's my ex-girlfriend mother.
- 7 Q Okay, so, this was her house in St. Stephen?
- 8 A Yeah, that's where Ms. Betty McCray lives.
- 9 Q Okay, at that time she was living with her mother?
- 10 A Yeah.
- 11 Q Okay.
- 12 A She went back home.
- 13 Q So, you got there. Tell us what happened, I cut you off
- 14 What happened when you arrived at that house?
- 15 A He came into the lot, the front yard. He parked over to
- 16 the right and I got out and walked to the front door and it's
- 17 a good, I don't know how many yards, good 20, 30 yards each
- 18 way and Ms. Allman came to the door and told me that Betty
- 19 wasn't home. So, I said okay and I left and got back in his
- 20 cab and then he took me to Georgetown.
- 21 Q And you had - did you tell him before you left Charleston
- 22 that you wanted to ultimately go on to Georgetown?
- 23 A That's why he waited, yes.
- 24 Q Okay, and did you all discuss a fare? That's a long way.
- 25 A Yes.

Craig Geathers - Direct by Defense

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1 Q Okay, what was the fare?

2 A He charged me \$50.

3 Q And did you have to - when did you pay him? Did you pay
4 him?

5 A When we was going towards there, he said did I have the
6 money? I said, "Yeah," and I pulled out \$60 to show him, but
7 he got the money when we got to Georgetown.

8 Q Okay, did you stop anywhere on the way, either in St.
9 Stephen - other than the other passengers, you told me about
10 these other passengers, but once it was just you and Mr. King,
11 did you make any stops either on the way to St. Stephen or
12 from St. Stephen to Georgetown?

13 A No stops.

14 Q Stop for gas?

15 A No.

16 Q Now, what happened when you got to Georgetown?

17 A I got out. I got out right in front of my aunt's door.
18 I had the key, I went inside and everything and he drove off.

19 Q All right, and do you know what time it was when you
20 arrived home?

21 A It's no more than 11 because it didn't take that long to
22 - because he didn't make any stops like I said, about ten
23 something.

24 Q Any way that you know that it was 11?

25 A I forget what was on TV but I know it wasn't 11 because

Craig Geathers - Direct by Defense

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1 the show that was on didn't, didn't ended, but I forget what
2 show it was.

3 Q It was - was it a show that you would expect would end at
4 11?

5 A Yes, sir.

6 Q Okay, a show that you had seen before?

7 A Yes.

8 Q Okay, when did you then go - then - when did you leave
9 for New York City?

10 A I left like the next day or two the most. I think one or
11 two days. I was already packed already.

12 Q And your mother's birthday was when?

13 A It's [REDACTED], that's her date of birth.

14 Q Were you home for your mother's birthday?

15 A Yes, I was.

16 Q Okay, were those plans made - when did you make the plans
17 to return to New York? When was that plan made?

18 A It was prior to me not finding a job and I left that the
19 job that I did have out here. I took a leave of absence
20 trying to find a better job that paid more money.

21 Q So, was that a week before, a month before you left?

22 A It was no more than two weeks.

23 Q Do you own a weapon, a pistol, handgun?

24 A No, sir.

25 Q Any of your relatives that you were staying with have a

Craig Geathers - Direct by Defense

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1 weapon?

2 A No.

3 Q When - so, when you returned to New York, you had already
4 worked as a tax preparer at that point; is that correct?

5 A Early that year.

6 Q Okay, so, we're - when did - what happened when you got
7 back to New York in terms of what you were doing, where you
8 were living?

9 A I just was home up until time to go back to work in
10 January of 2002.

11 Q Let me jump back to your cab ride. When you got to
12 Georgetown, did you pay Mr. King for the fare?

13 A Yes, I did.

14 Q And how much was that?

15 A \$50.

16 Q Any question, quarrels, complaints about the amount of
17 the fare?

18 A No, because he already stated that the fare was \$50 and I
19 agreed to it.

20 Q Did he, did he just come up with that figure himself or
21 how did that amount, was that amount arrived at?

22 A He got on the radio, dispatch or whatever and they quoted
23 him or he asked them, one of the two. I know that he had to
24 get on the radio to get the amount.

25 Q He needed permission or to get the amount?

Craig Geathers - Direct by Defense

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1 A He had to get it confirmed or something but I know he had
2 to speak before he gave me an answer to someone.

3 Q Did he give a reason for that?

4 A I don't recall. I didn't question it. I know it was a
5 good, you know, two, you know, two stops, one to two stops or
6 - that fare was kind of reasonable to me.

7 Q Because he was going to a whole 'nother county; right?

8 A Yeah, well, distance.

9 Q So, you didn't have any - in your mind was the fare
10 reasonable?

11 A Well, I didn't question it because I had the money.
12 Earlier that day I stopped at a ATM machine. I had more money
13 than I needed. So, \$50, you know, I had to just give the lady
14 the information and get back to the house so I can, you know,
15 just be done with it. So, I just paid him.

16 Q At any time during that cab ride - how long would you say
17 you were in Mr. King's cab?

18 A Maybe a good hour, maybe a little more or less. Maybe a
19 little more than an hour, but not that much more.

20 Q Have any quarrels or arguments with Mr. King during that
21 time?

22 A No, he, you know, he talked and I talked, that was about
23 it, you know. I didn't - first time of meeting him, so, we
24 just talk while we was in the same car, that's it.

25 Q Did you ever threaten to kill him?

Craig Geathers - Direct by Defense

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1 A No.

2 Q Have a handgun with you?

3 A No.

4 Q Find a handgun anywhere that you happened to have with
5 you?

6 A No.

7 Q Do you remember what you had with you when you went to
8 Charleston?

9 A I had some legal papers with Ms. Betty's Social Security
10 number on there, I think it's something from her job and my
11 wallet, my hat, my watch, that's it, no bags, no nothing.

12 Q Did you take any money from Mr. King?

13 A No.

14 Q Did you demand any money from him?

15 A No.

16 Q Did you threaten him if he didn't give you any money?

17 A No.

18 Q And there was nobody between, when you left Mr. King, you
19 were the only passenger, that was it in that cab; is that
20 correct?

21 A He put me right in front of the door and he made a U-turn
22 and left and I walked in the door, unlocking the door and
23 closing, that was the last time I seen him.

24 Q Okay, did ---

25 MR. FOX: One moment, Your Honor.

Craig Geathers - Cross by State

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1 BY MR. FOX:

2 Q Other than the hat, do you recall what you were wearing
3 that day nine years ago?

4 A I did have on a hat, pants and shirt. Don't recall what
5 he said I had on, no.

6 Q But you don't recall ---

7 A Because I don't even own the things that he mentioned.

8 Q Okay, thank you. Please answer any questions the
9 Solicitor has for you.

10 THE COURT: Ms. Coté, cross examination?

11 MS. COTÉ: Yes, Your Honor.

12 CROSS EXAMINATION.

13 BY MS. COTÉ:

14 Q Now, Mr. Geathers, you testified that you were in Mr.
15 King's taxi cab on the night of August 5th, 2001? Is that
16 right?

17 A Yes.

18 Q Okay, and you had him take you to Betty McCray's house in
19 St. Stephen; that's right?

20 A Yes.

21 Q Okay, and you weren't working at the time of all this in
22 2001. You were on a leave of absence. Isn't that correct?

23 A I took a leave of absence for a better job, yes.

24 Q But you weren't working at that time, correct?

25 A That's correct.

Craig Geathers - Cross by State

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1 Q And then you went back to New York right after this
2 happened. Isn't that correct?

3 A Yes.

4 Q Isn't it true that you have a conviction for attempting
5 to bribe a public servant in New York in 2004.

6 A That's what it says but it's not true.

7 Q That's what that says?

8 A That's what it says there, but the police did not even
9 push that issue.

10 Q What's your date of birth, Mr. Geathers?

11 A [REDACTED].

12 MS. COTÉ: Beg the Court's indulgence, I have a lot
13 of paperwork. I apologize.

14 THE COURT: All right.

15 BY MS. COTÉ:

16 Q Mr. Geathers, will you - I'm going to show you your NCIC
17 criminal history and see if that refreshes your memory at all.

18 MR. FOX: Your Honor, I'm going to object unless
19 they lay a foundation for what she's, about the document she's
20 about to show him and I don't know if he has any particular
21 knowledge about at least that document. She's asking him
22 about what's reflected on this document. He's - she's asked
23 him a question, he's answered.

24 THE COURT: Okay, yeah, I sustain the objection unless
25 that's something he's produced. I don't know. You can ask

Craig Geathers - Cross by State

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1 him about the convictions.

2 MS. COTÉ: Beg the Court's indulgence.

3 BY MS. COTÉ:

4 Q Okay, and isn't it true that you have a conviction for
5 petit larceny on December 10th, 2008, in New York?

6 A My belief is if it's there then, yes, it is true.

7 Q And isn't it true that you have a conviction for petit
8 larceny on December 22nd, 2008?

9 A I believe so.

10 Q Isn't it true that you have conviction for petit larceny
11 on January 14th, 2009?

12 A It may be true, yes.

13 Q Isn't it true that you have a conviction for petit
14 larceny on February 13th, 2009?

15 A Yes.

16 Q Isn't it true that you have a conviction for petit
17 larceny on March 8th, 2009?

18 A Yes.

19 Q Isn't it true that you have two convictions for petit
20 larceny on May 12th of 2009?

21 A I don't know about two, maybe one.

22 Q Isn't it true that you have a conviction for petit
23 larceny on June 30th, 2009?

24 A No, that's not true. June 30th?

25 Q Yes.

Craig Geathers - Cross by State

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1 A That's not true. I was not - that's, that's false.

2 Q But you did have all those other petit larceny
3 convictions, correct?

4 A I believe so.

5 Q So, one, two, three, four, five, at least six petit
6 larceny convictions?

7 A Maybe five, yes.

8 Q But somewhere around that neighborhood, you have at least
9 five or more, correct?

10 A At least five, yes.

11 MS. COTÉ: Beg the Court's indulgence.

12 THE COURT: All right.

13 MS. COTÉ: Nothing further, Your Honor.

14 THE COURT: All right, redirect?

15 MR. FOX: Just one moment, Your Honor, please.

16 THE COURT: All right.

17 MR. FOX: No further questions, Your Honor.

18 THE COURT: All right, sir, you may step down.

19 All right, Mr. Fox, any other witnesses?

20 MR. FOX: No, Your Honor, that would be the defense
21 case, Your Honor.

22 THE COURT: All right, does the State have anything to
23 call in reply?

24 MS. COTÉ: No, Your Honor.

25 THE COURT: All right, all right, ladies and

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1 gentlemen, the Defense has presented their case and the State
2 does not have anything in reply. Now is the time of the trial
3 where we need to take up some legal matters. It's basically
4 getting my jury charges together and going over them with the
5 attorneys and things of that nature. So, I'm going to excuse
6 you back to the jury room to stretch your legs, get something
7 to drink and things of that nature.

8 I just want to tell you the reason that we excuse you
9 back to the jury room at this point in time is not that we're
10 trying to hide anything from you. It's just that, as I told
11 you earlier, you are the sole deciders of the facts in this
12 case. I decide the law to be applied in this case; however,
13 when I discuss these legal matters with the attorneys, it
14 often requires the attorneys and me to discuss issues of fact
15 and we don't want anything that the attorneys say or anything
16 that I say to influence your decision as to what the facts are
17 because you are to base your decision of the facts exclusively
18 on the testimony and evidence presented. So, that's why we
19 excuse you back to the jury room when we discuss these legal
20 matters. So, I'm going to excuse you back to the jury room
21 very briefly. It shouldn't be too long and we'll bring you
22 out in just a minute. Okay? Please do not discuss the case
23 even among yourselves at this time. If everybody else would
24 please remain seated while the jury is excused.

25 (Whereupon, the following takes place outside the

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1. presence of the jury.)

2. THE COURT: All right, anything we want to put on the
3. record at this point in time?

4. MS. COTÉ:: No, Your Honor, nothing from the State.

5. THE COURT: Any from the Defense?

6. MR. FOX: Yes, Your Honor, since the Defense has
7. also rested, we would renew our motions for directed verdicts
8. on both indictments.

9. THE COURT: All right, motions are noted; however, I'm
10. going to deny the motions. As I recall it was a motion for a
11. directed verdict and I'm going to deny that. All right, if
12. you'd give me about five minutes because all I've got to do is
13. go delete two portions that I had inserted in the instruction.
14. I'm going to delete that. I'll get you copies out, give you
15. about five or ten minutes to look over that and see if there's
16. anything else you need put in or clarified. Okay?

17. MR. FOX: Thank you, Your Honor.

18. THE COURT: So, let's stand in recess for about ten
19. minutes. I think we've got time to do the closing arguments
20. and charges today. What do you think?

21. MS. COTÉ: It's up to Your Honor.

22. THE COURT: Okay.

23. MR. FOX: Yeah, I - however you'd like to handle it,
24. Your Honor.

25. THE COURT: All right, all right, well, let's just

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1 take about a ten minute recess and I'll be right back in just
2 a second.

3 OFF THE RECORD

4 (On the record.)

5 (Whereupon, the following takes place outside the
6 presence of the jury.)

7 THE COURT: All right, anything from the State before
8 we bring the jury back in?

9 MS. COTÉ: No, Your Honor, nothing from the State.

10 THE COURT: All right.

11 MR. FOX: Nothing from the Defense, Your Honor.

12 THE COURT: All right, all right, let's go ahead and
13 bring the jury back in.

14 (Whereupon, the following takes place in the presence of
15 the jury.)

16 THE COURT: All right, ladies and gentlemen, welcome
17 back. We have concluded the evidentiary portion of this
18 trial. The State has presented its case. The Defense has
19 presented its defense and now is the time of the trial where
20 the attorneys make their closing arguments to you and I charge
21 you on the law of the case and then I send you back to begin
22 your deliberations. However, given the hour of the day, the
23 closing arguments and the jury charge usually take about an
24 hour or a little bit more; and so, rather than sending you
25 back to begin deliberations right before five o'clock, I think

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1 we're going to go ahead and break for the day so that
2 everybody comes back tomorrow morning and we'll finish it up
3 tomorrow morning. We're kind of in those - that in between
4 time where it's almost too early to stop but it's too late to
5 get into closing arguments and jury charges. I don't want to
6 send you out to begin your deliberations right before five
7 o'clock because I know people have to get home and tend to
8 things this evening. So, I'm going to ask that you please be
9 back in the jury room tomorrow morning at 9:30 and we'll
10 resume the trial of this case. We'll begin with the closing
11 arguments by the attorneys. I'll charge you on the law and
12 you can begin your deliberations, but please do not discuss
13 this case at this time. It is still too early to even begin
14 your deliberations. I'll let you know when you can start
15 talking about the case, but please do not discuss it even
16 among yourselves at this time, don't conduct any independent
17 investigations. Don't go looking on the internet or trying to
18 find out anything about it. I hope everybody has a good
19 evening and we'll see you back at 9:30 tomorrow morning.
20 Thank you very much.

21 (Whereupon, the following takes place outside the
22 presence of the jury.)

23 THE COURT: All right, anything from the State before
24 we recess for the evening?

25 MS. COTÉ: No, Your Honor.

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1 THE COURT: Anything from the Defense?

2 MR. FOX: No, Your Honor.

3 THE COURT: All right, we will recess until 9:30
4 tomorrow morning. Okay?

5 OFF THE RECORD

6 (On the record, Wednesday, June 23, 2010.)

7 (Whereupon, the following takes place outside the
8 presence of the jury.)

9 THE COURT: All right, anything from the State before
10 we bring the jury in?

11 MS. COTÉ: No, Your Honor.

12 THE COURT: Anything from the Defense?

13 MR. FOX: No, Your Honor.

14 THE COURT: All right, I guess procedurally we'll just
15 bring them in, go ahead go into closing arguments, I'll charge
16 them and then we'll send them out to deliberate. Okay?

17 MS. COTÉ: Sounds good, Your Honor.

18 THE COURT: All right, let's bring the jury in.

19 (Whereupon, the following takes place in the presence of
20 the jury.)

21 THE COURT: All right, ladies and gentlemen, welcome
22 back. I hope everyone had a good evening. We're now ready to
23 resume the trial of this case; however, we have reached that
24 part in the trial where the attorneys make their closing
25 arguments to you. They've presented all of the testimony and

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1 evidence to be presented in this case and they will now each
2 make a closing argument to you. Like their opening
3 statements, these closing arguments are not evidence in the
4 case. It is simply the attorney's contention as to what they
5 feel the evidence has shown. If an attorney makes a statement
6 as to a matter of fact that is different from what you find
7 the facts to be, you're to disregard the attorney's statement.
8 Likewise, if the attorneys make a reference to a matter of law
9 that is different from the law as I instruct you at the close
10 of their arguments, you're to disregard their statements.
11 However, they are given the opportunity to make a closing
12 argument to you that sets forth their position as to what they
13 feel the facts have shown and what the law is in this case.
14 All right, are you waiving opening?

15 MS. COTÉ: Yes, Your Honor.

16 THE COURT: All right.

17 MS. COTÉ: I'll waive the law and the facts together.

18 THE COURT: All right, Mr. Fox?

19 MR. FOX: Thank you, Your Honor, may it please the
20 Court?

21 THE COURT: Yes, sir.

22 MR. FOX: Good morning, ladies and gentlemen. This
23 is my opportunity to address you one final time before you
24 retire to your jury room, begin deliberations. I want to
25 thank you for your time and service this week. I know you

Closing Argument by Defense

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1 will do - fulfill your duty. As the Judge told you before the
2 beginning of this trial or at the commencement of this trial,
3 the burden of proof is on the State of South Carolina. Mr.
4 Geathers has no burden of proof, he need not show anything.
5 It's been said that this is because it's impossible to prove
6 negative, it may be impossible to prove you are not guilty,
7 but the State has the burden to show, in this case, Mr. Craig
8 Geathers is guilty beyond a reasonable doubt of armed robbery
9 and kidnapping. I'm going to ask you and I believe and I will
10 go through with you the reasons that I believe he is not
11 guilty of both charges.

12 The Judge will define the law for you in a few moments.
13 One of the things he will talk to you about is reasonable
14 doubt, which I spoke to you about two days ago. I believe
15 Judge Culbertson will tell you a reasonable doubt is a doubt
16 that leaves you a doubt that would cause a person to
17 hesitate to act in their daily life. In other words, if you
18 were making a decision in your personal life, if you have that
19 degree of doubt that would cause you to hesitate to take
20 action, whatever it is whether, whether you're buying a house
21 or a car or am I going to take a vacation, am I going to send
22 my kid to private school, public school, if you have that
23 degree of doubt that would cause you to hesitate to act in
24 your personal life, that's what we would think of as a
25 reasonable doubt in criminal court. Okay?

Closing Argument by Defense

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1 The State must leave you, the evidence that they've
2 presented must leave you, 12 of you, all 12 of you, must
3 be a unanimous verdict, firmly convinced of Mr. Geathers'
4 guilt, not speculating as to whether he is guilty, not
5 guessing, not thinking, well, he could be guilty, firmly
6 convinced. They can't get the ball down to the one yard line,
7 they got to get it over the goal line. Okay? Firmly
8 convinced.

9 I think, and I'll go through, I'm not going to go through
10 line by line every last thing that you've heard in the
11 courtroom, but I'm going to point out some things that I
12 believe should cause you to hesitate to act and leave you far
13 less than firmly convinced of Mr. Geathers' guilt.

14 The Judge will tell you you are the judge, obviously, you
15 are the sole judges of the fact. The Judge is going to give
16 you the law and tell you the law to apply, but you are here to
17 judge the fact and part of judging the facts, interpreting the
18 facts is judging the credibility of the witnesses, the
19 believability of the witnesses. The Judge will tell you with
20 regard to any witness you may believe every last word they
21 tell you. You might reject every last word they tell you or
22 you may believe some of what they tell you and not the rest
23 and that's something you do in your daily life anyway. You've
24 got experience doing that just by virtue of living and walking
25 this earth for a number of years.

Closing Argument by Defense

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1 Police officers, they had to be here for different
2 reasons. Investigator Lambert and Investigator Thacker are
3 the first two individuals that testified. They responded,
4 they followed up some leads. They investigated the case.
5 They were necessary for the State's point of view to establish
6 certain facts to try to convince you of Mr. Geathers' guilt.
7 They were not eyewitnesses however. I don't think you have
8 any reason to doubt anything either investigator told you, I
9 do not, but they, they know certain pieces. They came along
10 after the fact. They have no idea what happened August 5th,
11 2001. They weren't there. They're important witnesses, but
12 obviously you don't have to be a lawyer to understand that
13 this case comes down to Mr. King and Mr. Geathers.

14 Betty McCray was another witness. She knew what little
15 bit she knew. She helped the police identify Mr. Geathers as
16 a suspect, but again, she was not around. She was not an
17 eyewitness to this alleged armed robbery and kidnapping
18 either. So, she has her own little piece of the puzzle but it
19 does not get you, I think, across the goal line certainly,
20 again Mr. King and Mr. Geathers.

21 So, in judging believability, let's start with that, of
22 the witnesses, let me step back and say it's not my place
23 certainly to speak for Ms. Coté. She's obviously shown
24 herself to be a very capable prosecuting attorney. She
25 doesn't need my help in prosecuting her case, but you can tel

Closing Argument by Defense

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1 I have to speak first. I don't get a chance to get back up
2 and speak to you. When I'm done, I'm done and she will get up
3 and present her argument. So, I have to to a degree
4 anticipate things I believe she will say or arguments I think
5 she will make to you. One of the things that she may say is
6 who's got a motive to lie between Mr. King and Mr. Geathers?
7 Who's got the motivation to be less than truthful with you?
8 And I think she will say certainly it's the Defendant,
9 certainly it's Mr. Geathers. He's facing conviction on two
10 very serious crimes. He would do anything to avoid that. I
11 would ask you to reject that by itself and judge the witnesses
12 by what you heard, what they told you from the witness stand,
13 from their demeanor, from their consistency in their testimony
14 and things they told you from the way they acted, the way they
15 presented themselves because if you decide in your mind,
16 "Well, he's just a Defendant, Mr. Geathers, he's over there
17 facing going to jail maybe, very serious crimes, he'd do
18 anything to avoid that, I'm not going to - I can't believe him
19 for that very reason," well, you have just stood the
20 Constitution on its head if that's your attitude and you have
21 basically said to any Defendant that comes before a jury, "You
22 have no right to testify or to remain silent because we're not
23 going to listen to a thing you say." If you do that, you may
24 reach the conclusion that Mr. Geathers should not be believed.
25 I think that would not be the right conclusion at all, but it

Closing Argument by Defense

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1 should be based on what you observed, not on the fact that
2 he's a Defendant in a criminal courtroom.

3 Now, let's talk about Mr. Geathers and Mr. King. Mr.
4 King testified first. He said he's a victim in the armed
5 robbery and kidnapping. How many times did Mr. King say, and
6 I recognize that this is an old case, nine years old. How
7 many times did Mr. King hesitate or say, "I don't remember,"
8 or, "I don't know?" He did that consistently through his
9 testimony. He testified specifically on the time that this
10 occurred he was all over the place. If you go back to now in
11 Court yesterday he said that this occurred about 12:30 to one
12 o'clock. Previous testimony he said as early as 11:30. When
13 he first notified the police - well he didn't notify the
14 police, not talking about that. When the police first
15 responded he indicated it happened at four or five a.m. They
16 got a call at four or five a.m. to pick up Mr. Geathers down
17 in North Charleston. So, he's all the way from 11:30 to four
18 or five in the morning, at the extremes 11:30 to five. That'
19 five and a half hours. Now, I could certainly - it would not
20 be unusual for someone to have a hard time remembering nine
21 years ago within an hour maybe exactly when something
22 happened, but something that's allegedly as traumatic as this,
23 I'm pretty sure you could hit a window better than five hours
24 I think that's one reason right there to doubt what he's
25 telling you.

Closing Argument by Defense

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1 The inconsistencies between what he told the police and
2 what he testified to in terms of the description, the things
3 that he left out in his written statement about the physical
4 characteristics and the dress of the supposed attacker, all
5 inconsistent. You can also take into account his prior
6 record, cocaine possession and accepting stolen goods -
7 receiving stolen goods or possession of stolen goods, all
8 factors you can take into account in assessing his credibility
9 or his believability.

10 Even under - even if you accept any of his timeframes,
11 Mr. King's timeframes in terms of when he first picked up Mr.
12 Geathers and when all this happened, wouldn't you like to see
13 anything, something, anything to corroborate his version of
14 events? Just anything. Say, "You know what, I can believe
15 Mr. King because the records from the taxi cab company bear
16 out the time that he gave us." Bless you. The record - the
17 officer testified that he contacted the cab company. They
18 sent him call sheets, you know, times that Mr. King's cab was
19 dispatched. None of those times match up with the time that
20 Mr. King has given you. I mean, they're not even in the
21 ballpark, no corroboration there.

22 Mr. King says, "I stopped for gas at this station." They
23 managed to actually find the attendant who was there. She had
24 a chance to observe the cab going around. Mr. King actually
25 came inside to pay. No mention, and again, a chance to see

Closing Argument by Defense

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1 the cab circle a couple of times and stop. No indication that
2 there was anyone other than Mr. King in that cab at that time
3 and that also does not line up with the officer told you that
4 the attendant at the gas station indicated that this happened
5 when she was opening up. Now, so, that tells me this wasn't
6 one of those 24 hour convenience stores that you have. So, I
7 think most of our experience would be that stations that open
8 would probably open early in the morning, five, maybe 5:30,
9 six. Most of them - I don't know of any that open, say, at
10 two or three in the morning. Why is that important? Well,
11 it's important because Mr. King told you this all happened
12 11:30, 12, 12:30. This is all happened much, much earlier and
13 this was on the way, remember, from Charleston up to
14 Georgetown. Okay? So, it doesn't - the time does not jive at
15 all. In other words, there's no corroboration. That does not
16 coincide with what Mr. King wants you to believe was the time
17 frame and what happened with all of this and I think that's
18 significant. That's doubt. That's hesitating to act,
19 hesitating to believe that this person is guilty.

20 Mr. Geathers, on the other hand - let's continue to talk
21 about Mr. King. So, he has this wreck. He says, "I'm being
22 threatened. I've got a gun to my hand. He was making me
23 drive faster and faster and I drive off the road." He didn't
24 do anything at that point. According to him, Mr. Geathers
25 leaves and walks away and he stays there for 30 or 45 minutes

Closing Argument by Defense

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1 just sitting there. Now, maybe he's too scared to move but
2 he makes no attempt to notify anybody, to contact anybody, to
3 walk the opposite direction just a couple of minutes maybe to
4 see if maybe a car will come by, to see if maybe there's a
5 house or somewhere I can call, "Hey, I've been robbed at
6 gunpoint. There's a dangerous man loose. I'm fearing for my
7 life. Come help." Nothing happens. No police involvement
8 and originally it's the highway patrol who respond to a wreck
9 because someone else sees a car off the road and contacts
10 them, not Mr. King. So, the highway patrol gets there and now
11 we have the tale of the armed robbery and kidnapping.

12 The police arrive, Investigator Thacker, Investigator
13 Lambert. They speak to Mr. King and they begin to investigate
14 this thing. I think this is very interesting also. So, now
15 Mr. King tells his tale, and through some good police work the
16 police trace the route and they're able to come up with the
17 name of Craig Geathers. So, to the point and the location
18 they go to Mr. Geathers' aunt house and they're able to look
19 for him. "Now you're a suspect, we're going to come look for
20 you." I find it very, very interesting though what they did
21 not do. The report they have is a man with a gun, stuck it in
22 the head of Mr. Harold King, forced him to drive around
23 Charleston and Berkeley and Georgetown counties, threatened
24 his life and stole some money from him when all is said and
25 done and then vanished. They had a description from Mr. King.

Closing Argument by Defense

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1 Certainly there's a gun. They didn't walk up the road even a
2 ways to look for the gun. Maybe a short way, maybe the guy
3 tossed it. Happens all the time. Criminals do stupid things
4 all the time. That's how they get caught. They didn't even
5 walk up the road to see if maybe he tossed the gun in the side
6 in the bushes or anything. All right, didn't look for any of
7 that. Didn't even look, well, now, forget find, didn't look
8 for.

9 They went to his known residence in Georgetown and asked
10 for him and when they were told he wasn't there, that was the
11 end of it. They didn't say to the homeowner, Mr. Geathers'
12 aunt, "Hey, could we come in and look around? We're looking
13 for a gun. We're looking for a pink towel. We're looking for
14 a hat, backpack, shirt with Iowa written on it." Didn't even
15 ask to look for those things. Never went back to a Judge
16 later and said, "We got the name of a man, Craig Geathers, a
17 description and some items of evidence that would be very
18 useful in prosecuting that man. We would like a search
19 warrant to search his aunt's house," if she had not given
20 permission. Never did that.

21 They had an address for him in North Charleston, a
22 residence. They never went to that address in North
23 Charleston. They never called the North Charleston Police
24 Department and said, "Hey, would you go around, look for Mr.
25 Geathers at his address in North Charleston, maybe see if you

Closing Argument by Defense

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1 can find a gun, a hat, a backpack, a pink towel, a shirt with
2 Iowa written on it?"

3 You saw those officers testify. You saw their demeanor
4 and the way they approached their job. Did they strike you as
5 being incompetent? I don't believe so. What reason would
6 there be that they might not follow up in such a very easy
7 way? It's not like they had to go around the world to hunt
8 for this - to find this, the places where Mr. Geathers was
9 living. They had two different places to look. It's not like
10 they couldn't have asked for permission or got - they
11 absolutely if they'd gone to a magistrate and said, "Here are
12 the facts, we want to search these houses, this apartment,"
13 there is no doubt that they would have been given that search
14 warrant on the facts that they would have presented. Never
15 did that. So, it makes you wonder why they didn't do that.
16 Makes you wonder - and I don't know, we don't have testimony
17 about it but I think that is a doubt. Why didn't they follow
18 through and does that tell us anything about what the police
19 thought of this story that Mr. Harold King told.

20 Mr. Geathers testified, and like Mr. King he's got a
21 record, a recent record. I think most of it all was from 2009
22 or at the end of 2008. You learned that he is from New York
23 City. This is where he was born and raised. Ms. McCray
24 verified that. She met him in New York City. She knew him.
25 She visited him at his house, at his momma's house way up on

Closing Argument by Defense

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1 143rd Street in Manhattan and he told you why he came down here
2 and he told you why he went back. Going back, he'd been down
3 here long enough. He's on leave from his job. He's going
4 back to stay but also his mother's birthday was - what was it
5 the 7th or 8th of August. It wasn't like he just took off and
6 went to some place unknown.

7 Again, it would have been very easy for the police to do
8 a little bit of follow-up. They knew Betty McCray. They
9 talked to Betty McCray within a couple days of this. They
10 knew from Betty McCray that Mr. Geathers was from New York
11 with a very simple question, "Where does he stay in New York?
12 Do you know?" "Well, yes, I do know because you know what? I
13 met him in New York and I visited him in his momma's house in
14 New York. You might try looking up on 143rd in Manhattan."
15 That's not a particularly difficult thing. Police do that all
16 the time. It's not uncommon for people - suspects to go from
17 one place to another. So, they call up a police department in
18 another town or another county or another state or even
19 another country and say, "You mind checking up on Mr. Craig
20 Geathers? We want to talk to him about a crime that happened
21 in South Carolina." Happens all the time, but not in this
22 case, very easy thing to do, but Mr. Geathers, Mr. Geathers,
23 what was his demeanor on the witness stand? Think he was
24 calm? He was consistent in what he has told you? Obviously
25 he tells you a very different thing than - well, ultimately

Closing Argument by Defense

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1 than Mr. King. He doesn't deny being in the cab. It would be
2 very easy, I suppose, to say, "Look, I wasn't anywhere
3 around." He said, "Yeah, I got a cab with Mr. King and I went
4 from here and there," and some of those things are consistent,
5 "but I didn't rob this man. I didn't need to rob him, didn't
6 want to rob him. I'm not that kind of guy. I didn't rob
7 him." You can judge his demeanor and contrast that and his
8 testimony, you contrast that with Mr. King's. I think there
9 is a bit of a difference there.

10 Even if you believe Mr. King, you got to wonder from his
11 own testimony two different occasions, he has a chance, he
12 says he's being held at gunpoint, two different occasions
13 though the person who supposedly is threatening his life and
14 holding a gun to his head allows him to leave, leave the cab.
15 When he gets gas, no question that he got out by his own
16 admission, got out of the cab, went inside to pay for it. He
17 says, "I tried to tell them. I tried to tell them and she
18 just wasn't paying attention." Well, he's still inside and
19 the robber, if there is one, is still outside and you would
20 think that if you were, in fact, being held and your life is
21 in danger and a man's been pointing a gun at your head for
22 some period in time, you would make it pretty darn clear to
23 the person inside and that you wouldn't go back out even if,
24 as he says, he's standing there saying, "Come back." That's
25 strange. Now people react - certainly react differently in

Closing Argument by Defense

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1 very high stressful ways, you know, and here's these - I doubt
2 Mr. King's been robbed before. So, maybe that's a normal
3 reaction, but I think, again, you hesitate and you wonder and
4 you say, "Well, dang, that was a really good chance to end
5 this kidnapping and to let somebody know, okay, she walked
6 into the back, the attendant walked into the back and, okay,
7 there's a counter, but you know is it, you know I'm going to
8 do what I can. I'm not going to voluntarily go back into this
9 guy's clutches and get back in that cab and put the gun back
10 to my head. I'm going to dive over the counter. I'm going to
11 run as fast as I can. I'm going to dodge behind the display
12 racks. I'm going to avoid getting back in that situation. It
13 may not be perfectly safe inside but it's safer than it is
14 outside."

15 Same thing when supposedly - now they do, Mr. Geathers
16 told you yesterday, "I had him drive me to Betty McCray's
17 mother's house there in St. Stephen in Berkeley County," and
18 Mr. King said, "I got out, again, and went up to the door and
19 there was nobody there." Now, again, maybe he didn't feel
20 perfectly safe but now he's out of the cab a second time, and
21 by his own testimony, Mr. Geathers is still in the cab and
22 he's got a chance to try to see if maybe the door's open.
23 Maybe no one comes because they're asleep. It is nighttime.
24 Maybe just try to open the door and dive inside, run around
25 the back. Maybe not, but again out of the cab got to be safe.

Closing Argument by Defense

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1 than in the cab with the gun stuck right at your neck and it
2 makes you wonder why he wouldn't at least make any effort to
3 take advantage of that.

4 Mr. Geathers doesn't have to prove a thing. The State
5 has to prove that he is guilty beyond a reasonable doubt,
6 leave you firmly convinced of his guilt, no hesitation to act.
7 There is nothing that corroborates what Mr. King says. Now,
8 as jurors you're the finders of the fact. You may say, "We
9 don't need that. I'm satisfied just on Mr. King," but
10 wouldn't it be nice to have anything, something, anything
11 outside of Mr. King who would corroborate what he says, the
12 times from the cab company, clothes that were found, a gun,
13 anything, the attendant at the gas station who says, "Yeah,
14 you know what? I saw another man in the back of that cab when
15 he came," anything else. I don't know why Mr. King might lie
16 about this. I don't have to prove why Mr. King might lie
17 about all of this. Maybe he's two counties away from his
18 normal territory. Maybe a cab company doesn't, if their
19 records don't reflect where he was, you know, the officer read
20 you the times and the locations of those dispatches where cab
21 93 was sent, and I asked him if any of those that he knew of
22 were to a Georgetown County address and he said no. So, you
23 wonder if North Area Taxi Company was aware that Mr. Harold
24 King had their cab number 93 way up in Georgetown County, two
25 counties away and then how does he respond when there is an

Closing Argument by State

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1 accident for whatever reason and he goes off the road in their
2 cab. Maybe he's like that Nancy Sinatra song, he was messing
3 where he shouldn't have been messing. I don't know.

4 Ladies and gentlemen, my favorite author was Mark Twain.
5 He said, "It's a terrible death to be talked to death," and it
6 seems to be particularly terrible to be talked to death by
7 lawyers. So, I simply hope you will think about when you go
8 back to deliberate some of the points I've made. I'm very
9 sure there are things that will occur to you that I haven't
10 addressed. That's the reason we've got 12 jurors instead of
11 one lawyer deciding what happens. I'm absolutely convinced
12 that when you review everything and consider everything and
13 apply the law that Judge Culbertson will give to you that you
14 will return the right verdict in these cases which is not
15 guilty.

16 THE COURT: Ms. Coté?

17 MS. COTÉ: Thank you, Your Honor, may it please the
18 Court?

19 THE COURT: Yes, ma'am.

20 MS. COTÉ: "Nervous, angry, scared, thought he was
21 going to kill me." These are words that you heard yesterday
22 from that witness stand from the victim in this case, Harold
23 King, when he was recounting how he felt the night that
24 Defendant got in his taxi cab, held a gun to his head, forced
25 him to drive at high, unmanageable speeds and robbed him.

Closing Argument by State

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1 When you go back to that jury room to deliberate, ask
2 yourself, "How would a person who was a victim of an armed
3 robbery and a kidnapping act?" He would try to get help. You
4 know from Mr. King's testimony yesterday that that's what he
5 tried to do. He stopped and got gas and when he went in to
6 prepay for that gas, he told the woman, the manager, that
7 there was a man in his car with a gun. She heard the word gun
8 and she tried to save herself. Unfortunately, she didn't do
9 anything. She went and locked herself in the office. The
10 victim told you he saw that Defendant motioning him back
11 outside with the gun because he was afraid that that's exactly
12 what he was doing, trying to get help. So, he had to go back
13 outside. He did pump a little bit of gas, but he wasn't able
14 to get the full amount that he had paid for, leaving after
15 only \$2.51 had been pumped because the Defendant was worried
16 that he had told somebody what was going on. So, he wanted to
17 go ahead and get back on the road.

18 That testimony was corroborated. Investigator Lambert
19 drove back out to that gas station the next day with the
20 victim and the manager remembered him, remembered seeing the
21 taxi cab driving around and Mr. King told you he did the same
22 thing probably trying to get somebody to see him, hoping
23 somebody would see what was going on in that cab. She also
24 said that she remembered that only \$2.51 was taken from that
25 pump that he had prepaid for and she remembered thinking that

Closing Argument by State

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1 that was strange. It is strange because he - most people
2 don't do that. Most people get the full amount of things that
3 they pay for, but when a gun is held to somebody's head it's
4 understandable that he would leave that amount left to be
5 pumped.

6 What else would a victim do? A victim would try to
7 convince the Defendant or the person holding a gun to his head
8 to please spare his life and the victim told you yesterday he
9 tried to talk to the Defendant, tried to keep him engaged,
10 tried to tell him that he had grandchildren, that all he was
11 doing was driving this cab trying to make a living, trying to
12 tell him anything that he could do to save his life and
13 fortunately it worked.

14 A victim in an armed robbery would be helpful to the
15 police and would want to find the person that did this to him
16 Mr. King talked to the police on several occasions. They
17 talked to - he talked to them at that night at the scene when
18 he was able to give a detailed description. He didn't just
19 tell them it was black male. He told them it was a light-
20 skinned black male with bumps on his face wearing a cap,
21 wearing glasses and was able to give detailed description of
22 what exactly he was wearing and that he had a backpack with
23 him. That wasn't in his written statement, but he did give
24 police that information. So, there was no need for it to be
25 written down. It was written down by one of the police

Closing Argument by State

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1 officers in their report.

2 He also rode around with ---

3 MR. FOX: Your Honor, I'm going to object. There
4 are certain things that are being stated as facts that
5 actually aren't in evidence and weren't testified about.

6 MS. COTÉ: I apologize, Your Honor, that's not my
7 intention.

8 MR. FOX: Certainly ---

9 THE COURT: All right, I'll overrule the objection. I
10 have instructed the jury to disregard anything that they find
11 is not in the record. All right.

12 MR. FOX: Thank you, Your Honor.

13 MS. COTÉ: Thank you.

14 Mr. King and Investigator Thacker told you that he rode
15 around with Investigator Thacker right after it happened and
16 was able to point out the store that he'd gone to with the
17 Defendant, Gene Ward's Store located in Georgetown. He was
18 also able to go with Investigator Lambert to Charleston and
19 picked out the house that he rode to with the Defendant and
20 was able to identify the Defendant from a photo lineup. Not
21 just - he didn't just identify him as a person that was in his
22 cab. He identified him in that lineup and in this courtroom
23 as a person who robbed him at gunpoint and held him in his cab
24 against his will.

25 A person who's a victim of an armed robbery would come

Closing Argument by State

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1 and testify in court and he did that yesterday. It would hav
2 been very easy for him to say, "You know, that was nine years
3 ago. I don't even live in Charleston anymore. I've moved on
4 I don't - I'm not a cab driver anymore, you know, it's - just
5 leave it. I'm just going to leave it behind me," but no, he
6 wanted to be able to come here and tell his story and be able
7 to tell you what happened to him that night.

8 A victim of an armed robbery wouldn't go back to work.
9 He wouldn't go back to where it happened and Mr. King told
10 you, I asked him, "Were you able to get in that taxi cab
11 again," and he said, "I tried but I was too scared to have
12 anybody behind me the way that he was behind me," and he told
13 you he made good money. That wasn't the reason. He wasn't
14 going off to a higher paid job. He just couldn't do it
15 anymore. It was too scary for him.

16 Now, when you go back in the jury room I also want you to
17 ask how would a man who had committed an armed robbery and a
18 kidnapping act? Would he stay around in Georgetown or
19 Charleston at one of the addresses that the police knew he
20 lived at or hung out at? No, he'd get out of town, and Mr.
21 Geathers told you himself he got out of town. He told you he
22 was back in New York by his mother's birthday on August 7th,
23 2001. He even told you his bags were already packed. His
24 bags were already packed because he was planning on committing
25 another crime that night. He was planning on killing his

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1 girlfriend. Fortunately, she wasn't home and that didn't
2 happen, but fortunately for him his bags were already packed
3 when he decided to commit another crime; and so, he could go
4 ahead and hurry up and get out of town.

5 The police had no idea where he was. You heard Sergeant
6 Hayward testify that they checked - he's in charge of the
7 warrants division at the Sheriff's Office. He told you they
8 checked his address in Charleston, they looked for him in
9 Georgetown. They had no idea where he was and that's why
10 we're bringing this case to you in 2010. Sergeant Hayward
11 didn't receive word that the Defendant was in New York until
12 2009, and as soon as he realized where he was, he had him
13 brought back down to Georgetown so he could be tried for these
14 charges.

15 Also, when considering how a man who had committed an
16 armed robbery would act, he wouldn't have fare money. That
17 fare was his - the gun was his fare. He didn't need fare
18 money, and he told you he didn't have a job. He wasn't
19 working at the time. So, he wouldn't have the money. So, all
20 he needed was that gun that he had on him because he was going
21 to kill his girlfriend that night.

22 What else would a person that had just committed these
23 crimes do? He would sit here in the courtroom and listen to
24 all the witnesses testify and be able to tailor his testimony
25 and his story so he could answer the questions or fill in any

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1 holes. He heard the victim testify. He heard the victim
2 identify him in the courtroom.

3 MR. FOX: Your Honor, I'm going to object because I
4 think is an unfair comment on the Defendant's constitutional
5 right to testify.

6 MS. COTÉ: Your Honor, I have the ability to comment
7 on his ability to tailor testimony.

8 THE COURT: Okay, I'll overrule the objection. Go
9 ahead.

10 MS. COTÉ: Thank you, Your Honor.

11 The victim was able to - I showed him the picture of the
12 blue house and he said, "Yes, that's the house I drove up to.
13 I drove right up in front and he had me shine my headlights on
14 it," and Betty McCray said, "Yes, that's my house, and yes,
15 he's my ex-boyfriend." So, he knows that we had him in the
16 car that night. So, he decided, "Well, I'll admit to that.
17 They have me for that, but I'll deny everything else and I'll
18 explain everything else away." He had the ability to do that.
19 Consider everything that he heard while he was sitting in here
20 and consider his testimony and the way he answered the
21 questions and the way he conveniently explained everything
22 away.

23 You also know that he has a history of dishonesty, ladies
24 and gentlemen. You heard him testify about his record when I
25 asked him. He has at least five petit larceny convictions,

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1 petit theft. What did we learn from his testimony? He puts
2 himself in the taxi that night. He puts himself going to
3 Betty McCray's house, both corroborating the victim's
4 testimony. He told you he knew she was living with his
5 mother, with her mother; and so, he knew where she was and she
6 told you that they had a bad breakup. I think she called it a
7 horrible breakup, that she hadn't talked to him, didn't know
8 where he was. So, it didn't sound like they were on good
9 conditions at all. It didn't sound like he would be stopping
10 by her house to give her some information as he termed it.
11 Sounds like he was not welcome there.

12 He told you it was his first time meeting the victim and
13 the victim also told you that he didn't know this guy. He has
14 no reason to have a vendetta or any sort of ill will towards
15 him. The victim has no incentive to lie. The Defendant told
16 you that he was wearing a hat that night and he also told you
17 that - or and you also saw that he was wearing glasses while
18 he was testifying and that he wears glasses. So, that
19 corroborates the victim's testimony.

20 The victim is not on trial here. Mr. King is not on
21 trial. Who are we to say what a person should say or do or
22 how they should react when somebody has a gun to their head?
23 Yes, he is fuzzy on what times things happen but he had a gun
24 to his head. It's not like he was periodically checking his
25 watch to see what time things were happening, what time they

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1 were arriving at Betty McCray's house. He was more concerned
2 about how he was going to get out of that situation alive. He
3 was trying to keep the Defendant engaged, trying to talk to
4 him about their lives, about his girlfriend and about his
5 grandchildren, trying to keep himself alive, and he had a gun.
6 It's understandable that the Defendant - the victim isn't
7 going to run out of the car when he's been threatened
8 repeatedly that he's going to be killed. The Defendant told
9 the victim that it was his fault that he didn't get to the
10 girlfriend's house in time to kill her. So, that made him
11 even angrier and that made the victim even more scared of him
12 and he said that he just got angrier at him and he took - and
13 the Defendant told the victim that he was going to kill the
14 girlfriend, then kill Mr. King so there would be no witnesses.
15 He had every reason to do what this Defendant was telling him
16 to do.

17 There were inconsistencies. Mr. Fox spoke about this.
18 There were inconsistencies in Mr. King's testimony, but that's
19 what makes his testimony credible. If he were going to make
20 up a story on that witness stand, he'd have all of his ducks
21 in a row. He'd know every answer to every question, you know.
22 He'd know it just like that, but he told you, if he didn't
23 remember something he was honest he said, "I don't remember."
24 It's understandable that details become fuzzy after a trauma
25 like this.

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1 One thing that the victim was very clear about is that
2 this is the man that robbed him. He - I said it before, he
3 identified him in a photo lineup right after this incident
4 occurred and he identified him again yesterday in this
5 courtroom nine years later, said that there was no doubt in
6 his mind that that was the man, not just the man who was a
7 passenger in his cab, but the man who had robbed him at
8 gunpoint, and again, Mr. King did not know this Defendant. He
9 had no reason - he has no dog in this fight. The only thing
10 he came to do here yesterday was to tell his story and to tell
11 the truth.

12 Also ask yourself, what made this particular cab ride so
13 memorable to both Mr. King and to Mr. Geathers? Think about
14 it. Mr. King was a cab driver. Think about how many people
15 he picked up on a daily basis, how many people were in his cab
16 and how many people he had small talk with, talking about
17 girlfriends, wives, families. Why would - and he told you
18 yesterday he remembers, he remembers that the Defendant's
19 girlfriend was a stewardess. He remembers them talking about
20 his girlfriend and, you know, just small talk. Why would he
21 remember something so mundane? Well, why would he remember
22 what the girlfriend did for a living? He remembered because
23 there was a gun held to his head. That night was memorable to
24 him because of the robbery.

25 Same thing for Mr. Geathers. Betty McCray told you that

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1 she didn't know him to - she didn't know if he could drive and
2 she didn't know if he had a car. So, it's likely that - and
3 he told you himself that he took a cab from Georgetown that
4 night. So, it's likely that he spends a lot of his time in
5 cabs as well talking about his life, talking about
6 girlfriends. I mean, how would he remember this particular
7 cab ride? He knew so many details about that day. Said he
8 had gone to the ATM earlier in that day, nine years ago. How
9 would that be memorable to him? It's memorable to him because
10 that was the day that he was planning to kill his ex-
11 girlfriend, but instead he robbed the cab driver and held him
12 at gunpoint.

13 I'd like to take just a moment to go over the law that
14 applies in this case with you. Judge Culbertson will go over
15 all of the law in just a minute, and if there's anything that
16 I say that contradicts what Judge Culbertson says absolutely
17 follow what he says as he is the judge of the law in this case
18 as you are the judge of the facts.

19 Mr. Fox spoke earlier about the credibility of witnesses
20 and Judge Culbertson will charge you on that in his charge on
21 the law. Use your common sense when talking - when you go
22 through each of these witnesses. Ask yourself if any of these
23 - if these witnesses were forthright in their testimony, if
24 they appeared to be answering the questions truthfully, were
25 they hesitant? Ask yourself if these witnesses had any bias

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1 towards either party. The police officers had no dog in this
2 fight. They're just here to tell what they saw, what they
3 observed and the steps in their investigation. The victim,
4 again, has no dog in this fight. He's simply here. He has no
5 reason to lie. He's just here to tell what happened to him.
6 He didn't know the Defendant. He has no reason to see
7 anything happen to him.

8 The Defendant is here charged with kidnapping and armed
9 robbery. We have proved all elements of both of these charges
10 beyond a reasonable doubt. Kidnapping, we must prove that the
11 Defendant knowingly and unlawfully seized, confined,
12 inveigled, decoyed, kidnapped, abducted or carried away
13 another person without the authority of law. Here we have
14 proved that Mr. King was confined. He was confined in his
15 taxi cab as the Defendant made him speed faster and faster
16 into Georgetown County, wouldn't, wouldn't let him leave. He
17 did get out of the cab to pump gas but he got right back in it
18 because the Defendant was motioning him to get back in the cab
19 with the gun. He wasn't free to leave, ladies and gentlemen.

20 Armed robbery is the taking and carrying away of the
21 personal property of another with intent to deprive him of
22 possession by use of force, threats or intimidation all while
23 armed with a deadly weapon. I told you at the beginning, and
24 you heard Mr. King testify, the deadly weapon in this case was
25 a gun. It was a pistol. Mr. King had his fare money that he

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1 had earned that day. That would be his personal property and
2 the Defendant took it and he threatened him by telling him
3 repeatedly that he was going to kill him. So, those elements
4 were satisfied as well.

5 I thank you for your attention during the course of this
6 trial and I ask that after Judge Culbertson advises you on the
7 law in this case and you go back to the jury room and apply it
8 to the facts that you've heard that you come back with
9 verdicts of guilty on both charges, armed robbery and
10 kidnapping. Thank you.

11 THE COURT: All right, ladies and gentlemen, all of
12 the evidence to be presented in this case has been presented
13 and the attorneys have made their closing arguments and now is
14 the time for me to charge you with the law to be applied in
15 this case. Now, the indictments charge the Defendant with
16 kidnapping and armed robbery. I remind you that the fact that
17 the Defendant was arrested, charged and indicted in this case
18 is not evidence in this case and cannot be considered by you
19 as evidence of guilt in this case, nor does the fact that the
20 Defendant was arrested, charged and indicted create any
21 presumption or inference of guilt. The indictments are simply
22 the formal written instruments which contain the charges made
23 against the Defendant. They are the formal documents by which
24 this case is brought to trial.

25 The indictments in this case allege several different

Charge

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1 offenses against the Defendant. As I previously stated, the
2 charges are kidnapping and armed robbery. Each indictment
3 charges a separate and distinct offense. You must decide each
4 indictment separately on the evidence and the law applicable
5 to it uninfluenced by your decision on the other indictment.
6 The Defendant may be convicted or acquitted on any or all of
7 the offenses charged. You will be asked to write a separate
8 verdict of guilty or not guilty for each indictment.

9 The Defendant has pled not guilty to these indictments.
10 That plea puts the burden on the State to prove the Defendant
11 guilty. A person charged with committing a criminal offense
12 in South Carolina is never required to prove his or her
13 innocence.

14 I charge you that it is an important rule of the law that
15 the Defendant in a criminal trial, no matter what the
16 seriousness of the charge may be, will always be presumed to
17 be innocent of the crime or crimes for which the indictment
18 was issued unless guilt has been proven by evidence satisfying
19 you of that guilt beyond a reasonable doubt. This presumption
20 of innocence does not end when you begin your deliberations,
21 but it accompanies the Defendant throughout the trial until
22 you reach a verdict of guilt based on evidence satisfying you
23 of that guilt beyond a reasonable doubt.

24 The presumption of innocence is like a robe of
25 righteousness placed about the shoulders of the Defendant

Charge

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1 which remains with the Defendant until it has been stripped
2 from the Defendant by evidence satisfying you of the
3 Defendant's guilt beyond a reasonable doubt.

4 The presumption of innocence is not mere legal theory. It is
5 not just a legal phrase. It is a substantial right to which
6 every Defendant is entitled unless you, the jury, are
7 satisfied from the evidence of the Defendant's guilt beyond a
8 reasonable doubt.

9 Now, what is reasonable doubt in the law? A reasonable
10 doubt is the kind of doubt that would cause a reasonable
11 person to hesitate to act. Proof beyond a reasonable doubt is
12 proof that leaves you firmly convinced of the Defendant's
13 guilt. We know very few things in this world with absolute
14 certainty and in criminal cases the law does not require proof
15 that overcomes every possible doubt. If, based on your
16 consideration of the evidence, you are firmly convinced that
17 the Defendant is guilty of the crime or crimes charged, you
18 must find the Defendant guilty. On the other hand, if you
19 think there is a real possibility that the Defendant is not
20 guilty, you must give the Defendant the benefit of that doubt
21 and find the Defendant not guilty.

22 I remind you that during this trial, you and I have
23 certain duties to perform. As the trial judge, my
24 responsibility is to preside over the trial of this case. I
25 also have the duty to rule on the admissibility of evidence

Charge

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1 offered during this trial. You are to consider only the
2 competent evidence before you. If any testimony was ordered
3 stricken from the record in this case during this trial, you
4 must disregard that testimony. You are to consider only the
5 testimony which has been presented from the witness stand, any
6 exhibits which have been made a part of the record in this
7 case and any stipulations of the attorneys.

8 I have the additional duty to charge you with the law
9 applicable to this case. As the presiding judge, I am the
10 sole judge of the law in this case and it is your duty as
11 jurors to accept and apply the law as I now state it to you.
12 If you have an idea as to what the law is or what the law
13 ought to be and your idea does not agree with what I now tell
14 you the law is, you must disregard your idea of what the law
15 is or ought to be because you are sworn to accept the law and
16 apply the law exactly as I state it to you.

17 In every case tried in this court before a jury, the jury
18 is the sole and exclusive judge of the facts in a case. A
19 trial judge cannot intimate, state, comment on or make any
20 statement to a trial jury about the facts in a case. Since
21 you the jury are the sole judge of the facts in this case, you
22 are not to infer from what I have said during the progress of
23 this trial in ruling upon the admissibility of evidence or
24 anything that I say now during the course of this instruction
25 to you that I have any opinion about the facts in this case.

Charge

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1 The law does not allow me to have an opinion about the facts
2 in this case. This matter is solely for you, the jury, to
3 determine. As jurors your duty is to determine the effect,
4 the value, the weight, and the truth of the evidence presented
5 during this trial.

6 Now, necessarily, you must determine the credibility of
7 witnesses who have testified in this case. Credibility simply
8 means believability. Your duty as jurors is to analyze and t
9 evaluate the evidence and determine which evidence convinces
10 you it is true.

11 In determining the believability of witnesses who have
12 testified in this case, you may believe one witness over
13 several witnesses or several witnesses over one witness. You
14 may believe a part of the testimony of a witness and reject
15 the remaining part of the testimony of the same witness. You
16 may believe the testimony of a witness in its entirety or
17 reject the testimony of a witness in its entirety. You may
18 consider whether any witness has exhibited to you any
19 interest, bias, prejudice or other motive in this case. You
20 may also consider the appearance and the manner of a witness
21 while on the witness stand.

22 Now, evidence has been presented that a witness has made
23 a prior statement which is not consistent with the witness's
24 present testimony. You may use this evidence to decide
25 whether to believe the witness. You may also use evidence of

Charge

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1 the earlier contradictory statements to determine the truth of
2 those statements. It is up to you to decide whether to
3 believe the earlier statement or the testimony given at trial.

4 If a witness is shown to have knowingly testified
5 untruthfully concerning any material matter, you may consider
6 this in determining whether to trust the witness's testimony
7 as to other matters. You may reject all testimony of that
8 witness or give all or part of the testimony the weight you
9 think it deserves.

10 Now, evidence has also been presented that a witness had
11 a prior criminal record. A person who has a past criminal
12 record is competent to testify during a trial. A past record
13 does not affect the ability of that witness to testify. The
14 past record may only be considered by you, if at all, in
15 determining the witness's believability. Remember, you are the
16 sole judge of the facts in the case and the believability of
17 any or all of the witnesses.

18 You have heard evidence that the Defendant was convicted
19 of crimes other than the ones for which the Defendant now
20 stands trial. This evidence may be considered by you, if you
21 conclude it is true, only in deciding whether the Defendant's
22 testimony is believable and for no other purpose. You must
23 not consider the Defendant's prior record as evidence of the
24 Defendant's guilt of the charges we are now trying today.

25 Now, the Defendant is charged with armed robbery. In

Charge

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1 order to prove this offense, the State must first prove beyond
2 a reasonable doubt that the Defendant took personal property
3 from the person or presence of another person.

4 Property is in the presence of a person if it is within
5 the person's reach, inspection, observation or control so that
6 the person could, if not overcome with violence or prevented
7 by fear, keep possession of the property.

8 The State must also prove beyond a reasonable doubt that
9 the Defendant carried the property away intending to
10 permanently deprive the owner of the property and to keep the
11 property for the Defendant's own use. The taking and carrying
12 away of the property must be been done with violence or by
13 putting the owner of the property in fear of violence.

14 Finally, the State must prove beyond a reasonable doubt
15 that the Defendant was armed with a deadly weapon during the
16 robbery. A deadly weapon is any article, instrument or
17 substance which is likely to cause death or great bodily harm.
18 Whether an instrument has been used as a deadly weapon depends
19 on the facts and circumstances of each case.

20 The Defendant is also charged with kidnapping. To
21 convict the Defendant of this charge, the State must prove
22 beyond a reasonable doubt that the Defendant knowingly and
23 unlawfully seized, confined, inveigled, decoyed, kidnapped,
24 abducted or carried away another person without authority of
25 law. To do a thing unlawfully is to do it willfully against

Charge

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1 the law. Knowingly means with knowledge, consciously, not
2 accidentally. Seize means to take hold of sudden - excuse me,
3 to take hold of suddenly or forcibly. Confine means to limit,
4 restrict or enclose within bounds, imprison or shut or keep
5 in. Inveigle means to lure, entice or lead astray by false
6 representations, promises or other deceitful means. Decoy
7 means to lure by or as if by decoy. A decoy is something to
8 entice a person into a trap. Kidnap means to remove a person
9 against his will by unlawful force or by fraud. Abduct means
10 to carry off secretly or by force for an illegal purpose.
11 Carry away means to remove.

12 The State does not have to prove that the Defendant did
13 all of these things. Instead, if you find beyond a reasonable
14 doubt that the Defendant did any of these things, you may find
15 the Defendant guilty of kidnapping. Something done without
16 authority of law is something which the law does not sanction,
17 permit, allow, condone or provide justification for. The
18 kidnapping does not have to be for any personal or monetary
19 gain or for any illegal purpose but may be for any reason
20 whatsoever.

21 Now, there are two possible verdicts for each indictment
22 which you may find in this case. No significance whatsoever
23 should be given to the order in which I state these possible
24 verdicts to you. I simply must state one first and one
25 second.

Charge

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1 On the charge of armed robbery, you may find the
2 Defendant guilty or you may find the Defendant not guilty.
3 On the charge of kidnapping, you may find the Defendant guilty
4 or you may find the Defendant not guilty.

5 Ladies and gentlemen, each of your verdicts must be
6 unanimous. Mr. Gaither, as foreperson when the jury agrees on
7 a verdict for an indictment, you'll write the verdict on the
8 back of the indictment right here where it says verdict.
9 Write the jury's verdict, sign your name, date it. When
10 you've reached a verdict on both indictments, knock on the
11 door and advise the bailiff that you have reached a verdict
12 and we'll bring you back in and receive the verdict at that
13 time.

14 Now, at this time I'm going to excuse you back to the
15 jury room; however, you're not to begin your deliberations at
16 this point in time. I need to go over with the attorneys to
17 see if they have any challenges or additions to my
18 instructions to you. If there are some and I deem that they
19 are worthy I'll bring you back in and give you those
20 additional charges or explanations. If there are none or if
21 I deny any requests for any additional charges, then we'll
22 send all of the exhibits back to the jury room with
23 instructions from the bailiff or the clerk that you can begin
24 your deliberations and you can start them at that time.

25 I'll excuse you back to the jury room, but please do not

Charge

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1 begin your deliberations at this time. Thank you very much.

2 (Whereupon, the following takes place outside the
3 presence of the jury.)

4 THE COURT: All right, any challenges, exceptions or
5 additions to the charges by the State?

6 MS. COTÉ: No, Your Honor.

7 THE COURT: Any by the Defendant?

8 MR. FOX: No, Your Honor.

9 THE COURT: All right, let's go ahead and make sure
10 we've got the exhibits. Here are the indictments and we'll
11 want to send those back to the jury room with instructions
12 that they can begin their deliberations, and when you take
13 them back there I'll need you to bring the alternate juror,
14 Ms. Davis, out. Okay?

15 MR. FOX: So, are you sending the indictments back?

16 THE COURT: Yeah, I'm going to send the indictments
17 back and let them write it on there.

18 (Exhibits reviewed and approved by counsel for State and
19 counsel for Defendant.)

20 (Alternate enters courtroom.)

21 THE COURT: Ms. Davis, you have the unenviable task of
22 having to sit through an entire trial but then not being
23 allowed to participate in the deliberations. As the
24 alternate, you are only to deliberate should something have
25 happened to one of the sitting jurors, but since that didn't

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1 happen in this case you will not be allowed to deliberate in
2 this case. You're welcome to be excused at this time or if
3 you wish to stay and stay with us to see what happens you're
4 permitted to do that as well. I'll leave it up to you, but I
5 do want to thank you for your service not only in this trial
6 but for this week. This would conclude any services you have
7 for the remainder of this term of General Sessions court. I
8 thank you for being here. I thank you for your service and
9 I'll leave it up to you as to whether or not you wish to be
10 excused or to stick around.

11 MS. DAVIS: I'll be excused.

12 THE COURT: All right, thank you very much and you
13 have a good day.

14 All right, do we have - I want to go ahead and take a
15 little break.

16 (Deliberations begin at 10:42 a.m.)

17 OFF THE RECORD

18 (On the record.)

19 (Question from jury at 11:42 a.m.)

20 (Whereupon, the following takes place outside the presence
21 of the jury.)

22 THE COURT: All right, we're on the record in the State
23 versus Craig Geathers. The jury has sent out several
24 questions written on a sheet of paper given to me by the
25 bailiff. The questions are as follows: "Is there a statement

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1 in evidence that the Hess gas station attendant said to the
2 investigator that the car driver came into the station and
3 said, 'There is some man in my cab with a gun'; did she run
4 into the back office; did she call the police; did the Hess
5 station attendant make any statement about a man with a gun or
6 the cab driver saying there was a man with a gun to
7 investigator; why didn't the gas station attendant give a
8 statement or testify; why didn't the mother of the girlfriend
9 testify or give a statement that she came to the door?" All I
10 can do is bring the jury out and say that we can't, that they
11 have all of the evidence in front of them, they heard all of
12 the testimony presented in the case, they have all of the
13 exhibits back there for them to consider and we can't make a
14 comment on whether anything was or was not presented as
15 evidence, that they have everything and that is what they have
16 to base their decision on.

17 Any comment from the State?

18 MR. HIXSON: That's correct, Judge, but you can also
19 send a note back if you want to if you don't want to bring the
20 jury out but I think that's the right answer.

21 MR. FOX: Yeah, I agree, Your Honor. I think the
22 answer is absolutely correct and I'm satisfied if Your Honor
23 wants to send a note to that effect rather than bring them out,
24 but however you want to handle that.

25 THE COURT: Yeah, let's do that. Let me -

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1 this is the response I've written on their notes, just put,
2 "Response: The Court cannot comment on the existence or
3 absence of witnesses or other evidence. You have heard all of
4 the testimony and received all of the evidence presented in
5 this case. Your verdicts must be based exclusively on the
6 testimony and evidence before you," and I signed my name as
7 Judge. Is that satisfactory?

8 MS. COTÉ: Yes, Your Honor.

9 MR. FOX: Yes, Your Honor.

10 THE COURT: Let's go ahead and mark this as a Court's
11 Exhibit, Court's Exhibit Four, all right, Court's Exhibit Four
12 and I'll just direct the bailiff to take that back into the
13 jury. I'll just put my response there for them. Make sure
14 that that is kept with the other stuff.

15 (Court's Exhibit Four marked and sent back to jury at
16 11:55 a.m.)

17 THE COURT: All right, we'll stand in recess in that
18 case until they have a verdict or we have another question or
19 whatever the case may be. All right.

20 MR. FOX: Yes, Your Honor.

21 MS. COTÉ: Yes, Your Honor.

22 THE COURT: Thank you.

23 Any problem with us just going letting the bailiff go in
24 there and order the lunch, find out what they want?

25 MS. COTÉ: No, that's fine, Your Honor.

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1 MR. FOX: That's fine.

2 THE COURT: All right.

3 OFF THE RECORD

4 (On the record.)

5 (Whereupon, the following takes place outside the presence
6 of the jury.)

7 THE COURT: I think what we're going to need to do is
8 bring the jury back in on this other case. They've got lunch
9 here. I want to bring the jury in and tell them that we have
10 lunch for them and that they can either deliberate through
11 lunch or that they need to stop deliberations, however they
12 want to do it. So, let's go ahead and bring Mr. Geathers in.

13 (Mr. Geathers enters courtroom.)

14 THE COURT: All right, anything from the State before
15 we bring the jury in?

16 MS. COTÉ: No, Your Honor.

17 THE COURT: Anything from the Defense?

18 MR. FOX: No, Your Honor.

19 THE COURT: All right, let's go ahead and bring the
20 jury in.

21 (Jury enters courtroom at 1:00 p.m. and the following
22 takes place in the presence of the jury.)

23 THE COURT: All right, ladies and gentlemen of the
24 jury, I apologize for interrupting your deliberations, but I
25 wanted to bring you back in and let you know that we have lunch

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1 for you and we're going to give you an opportunity to eat lunch
2 now. We've got some food for you.

3 With regard to your deliberations, you can do one of two
4 things and it's up to you as to which you choose to do. During
5 your lunch while you're eating lunch if you want to continue
6 your deliberations you can do so. If you want to stop
7 deliberating until you finish eating and resume at a later time
8 you can do that as well. The only restriction is that it must
9 be - everybody must do the same thing. You can't have certain
10 jurors deliberating while others do not. So, either as a group
11 you need to decide to stop deliberations until you finish lunch
12 or everybody agree to continue with deliberations through
13 lunch, and like I say, whichever you choose is fine with me.
14 It's just that the law says you can't have some jurors
15 deliberate while other jurors do not because during your
16 deliberations everybody has to be in the jury room. So, if
17 anyone takes any breaks or whatever the case may be you need to
18 stop until everyone is back and present, but however you want
19 to handle it will be left up to you. I'm going to excuse you
20 back to the jury room at this time. As I said you can decide
21 whether to deliberate or not deliberate, eat lunch, wait until
22 you finish lunch, however you want to do it, but we do have
23 lunch for you. I hope everybody has a good lunch and we'll
24 bring you back in as soon as you reach a verdict. Thank you
25 very much.

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1 (Jury exits courtroom at 1:02 p.m.)

2 THE COURT: All right, anything further from the State?

3 MS. COTÉ: No, Your Honor.

4 THE COURT: Anything from the Defense?

5 MR. FOX: No, Your Honor.

6 THE COURT: All right, we'll stand in recess in this
7 case until we hear from the jury, all right.

8 OFF THE RECORD

9 (On the record, question from jury at 2:15 p.m.)

10 (Whereupon, the following takes place outside the presence
11 of the jury.)

12 THE COURT: All right, let's bring Mr. Geathers back
13 in, please.

14 (Mr. Geathers enters courtroom.)

15 THE COURT: All right, we've received some more
16 questions from the jury in the State versus Craig Geathers. It
17 seems there is three questions. One, what is the transcript of
18 the gas Hess attendant interview with Deputy Cribb, did the
19 attendant say anything to Deputy Cribb about a gun or running
20 back into her office and locking the door. Two, what time did
21 the second fare (girl) - well, excuse me, what time of day or
22 night did the second fare girl share Mr. King's cab with the
23 Defendant, and three can we get a transcript of the testimony
24 given?

25 All I know is I can send a response, I can call them in or

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1 I can just put a written response that the Court cannot comment
2 on any witnesses' testimony, a transcript is not available.

3 However, they are at liberty to listen to the testimony played
4 back for any witness that they choose. Is that agreeable?

5 MS. COTÉ: That's fine, Your Honor.

6 MR. FOX: Yes, Your Honor, that's fine.

7 THE COURT: All right, let me mark this down.

8 MS. COTÉ: Your Honor, I'm sorry, was the first
9 question Deputy Cribb's testimony?

10 THE COURT: It says what is the transcript of the gas
11 Hess attendant interview with Deputy Cribb, did the attendant
12 say anything to Deputy Cribb about a gun or running back into
13 her office and looking - and locking the door.

14 MS. COTÉ: Deputy Cribb didn't even testify. The -
15 yeah, but ---

16 MR. FOX: They've got the name wrong.

17 MS. COTÉ: But yeah, I mean, as - but it would still
18 be the same answer.

19 MR. FOX: I think so, Your Honor.

20 THE COURT: Yeah, all right.

21 All right, I have put this a response to the jury's
22 questions, "The Court cannot comment on the testimony of any
23 witness and a transcript is not available. However, the jury
24 may listen to the audio recording of any witness who testified
25 at trial if you like." Will that suffice?

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1 MS. COTÉ: That's agreeable, Your Honor.

2 MR. FOX: Your Honor, I don't have a problem with
3 that response, but I do have a motion based on the question
4 they're now asking. If Your Honor will recall during the
5 Solicitor's closing argument I objected that she was arguing
6 things that had not been introduced in evidence. One of the
7 things, I believe, and if I - if I got this wrong, I apologize.
8 I don't mean to disparage Ms. Coté. I don't think it was done
9 deliberately, but there was, I believe she argued the first
10 question the jury has asked you about the gas station attendant
11 and testimony or statements to the police about the attendant
12 running into the back room, locking herself in, I don't recall
13 any testimony about that. The Solicitor mentioned that in her
14 closing and at that point I stood up and objected more
15 generally because there's another point she had made previous,
16 much smaller that I believe was not in evidence; and so, I
17 stood up, objected to the Solicitor arguing facts not in
18 evidence and you admonished her not to do that. Now the jury
19 is clearly weighing, they're asking, sending out questions on
20 the point that was not into evidence. There was no testimony
21 ---

22 THE COURT: Well, I'm trying to think ---

23 MR. FOX: Mr. King did not testify about the
24 attendant running back in there, it was not - there were no
25 police reports introduced. The officers did not - when they

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1 testified about their conversation with the attendant it was
2 solely on the taxi circling a couple of times, not paying, not
3 pumping all the gas that they paid for. There was no talk from
4 the attendant or from Mr. King or from the officer about her
5 running out. Somebody did say she - Mr. King said she went
6 into the back but no talk about the question they're now
7 asking; and so, I would request the Court grant a mistrial
8 because we now - they're now deliberating on things that came
9 out only in closing argument, not during the trial.

10 THE COURT: Well, I believe Mr. King did testify that
11 he came in and tried to tell her what was going on and that she
12 ran back into the office.

13 MR. FOX: But they're now - their question is much
14 more specific and involved now extra points that were not in
15 evidence.

16 THE COURT: Okay, well, I'm going to deny your motion
17 ---

18 MR. FOX: Thank you, Your Honor.

19 THE COURT: --- for a mistrial on that grounds, but I
20 am going to send this response back into them. This would be
21 Court's Exhibit Five and I say let's just send it back like
22 this and if they want to hear any testimony then they can send
23 back out a request to listen to it; okay?

24 MS. COTÉ: Thank you, Your Honor.

25 MR. FOX: Thank you, Your Honor.

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1 THE COURT: All right. Yeah, just go ahead and give
2 that back to them. All right, let's see just a minute and see
3 if they come right back out and request to listen to anything.

4 OFF THE RECORD

5 (On the record, question from jury at 2:40 p.m.)

6 (Whereupon, the following takes place outside the presence
7 of the jury.)

8 THE COURT: All right, we've received another request
9 from the jury. It says, "The jury would like to listen to
10 audio recordings of the following people: Mr. King, Mr.
11 Geathers, Investigator Cribb." Now, there was no Investigator
12 Cribb who testified. So, I was just going to put, it's my
13 response, "The witnesses in this case were Investigator Michael
14 Thacker, Jonathan Lambert, Sergeant James Heyward, Betty
15 McCray, Harold King, Craig Geathers. Whose testimony do you
16 want to hear?"

17 MS. COTÉ: That's fine, Your Honor.

18 MR. FOX: No objections to that, Your Honor.

19 THE COURT: All right, let's mark this as Court's
20 Exhibit Seven [sic]. All right, hopefully they'll be out.

21 (Court's Exhibit Six sent to jury.)

22 OFF THE RECORD

23 (On the record.)

24 THE COURT: All right, they have come back and what
25 they did is they just - the note that they sent in the first

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1 time I sent my response back they just circled the names of Mr.
2 King, Mr. Geathers, they struck through Investigator Cribb and
3 wrote Jonathan Lambert. So, those are the three I'm assuming
4 they want, want to listen to. So, all I know to do is let's
5 bring them back in and hear those.

6 (Court and court reporter confer.)

7 THE COURT: Okay, so, let's do Mr. Lambert first, Mr.
8 King and then Mr. Geathers because that's the order that they
9 testified to.

10 OFF THE RECORD

11 (On the record.)

12 (Whereupon, the following takes place in the presence of
13 the jury.)

14 THE COURT: All right, anything, in the State versus
15 Geathers, anything before we bring the jury back in?

16 MS. COTÉ: Your Honor, I just wanted to clarify we
17 will be playing the testimony in its entirety; is that correct?

18 THE COURT: Right.

19 MS. COTÉ: Okay, thank you.

20 THE COURT: Right.

21 MR. FOX: I have no objection to that, Your Honor.
22 have absolutely no preference how it's done. I've had
23 sometimes judges say if they - sometimes they have a particular
24 point. I have no idea what they do in this case. If they all
25 raise their hand and say, "We've heard enough," give them that

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1 option, but ---

2 THE COURT: Yeah, if they, if they stop me they will
3 and if they ask for a particular part I've had them come out
4 saying they wanted to hear this part of the testimony, we'll
5 play it until they get to that part, but ---

6 MR. FOX: And they've made - they didn't make that
7 indication this time.

8 THE COURT: --- here where they've just said, "We want
9 to hear the testimony," then I'm going to bring them back in,
10 play it. If they stop me we'll deal with it then, okay?

11 MR. FOX: Okay, that's fine, Your Honor. Thank you.

12 THE COURT: All right, let's bring the jury back in.

13 (Whereupon, the following takes place in the presence of
14 the jury.)

15 THE COURT: Ladies and gentlemen, welcome back. Mr.
16 Gaither, I understand the jury wants to hear the testimony of
17 three witnesses, being Harold King, Craig Geathers and Jonathar
18 Lambert again. Is that correct?

19 MR. GAITHER: Yes, sir.

20 THE COURT: Okay, all right, and we've got that. I
21 apologize for keeping you so long but it takes a while to get
22 the testimony set up so that we can play it back for you and we
23 will play it back for you. However, what I have decided is I'm
24 going to play these back in the order in which the witnesses
25 testified, in other words as I understand, isn't this right,

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1 Grace, we had Jonathan Lambert testify first and then Harold
2 King and then Craig Geathers. So, I'm going to play the
3 testimony back of these three witnesses in the order that they
4 testified; okay?

5 All right, so, the first will be the testimony of Jonathan
6 Lambert. If anyone can't hear or you're having trouble
7 hearing, just raise your hand and let me know.

8 (Testimony of Jonathan Lambert played in open court.)

9 THE COURT: All right, all right, ladies and gentlemen,
10 that was the testimony of Jonathan Lambert. The next testimony
11 you'll hear will be that of Harold King.

12 (Testimony of Harold King played in open Court.)

13 THE COURT: All right, that concludes the testimony of
14 Harold King. We'll now listen to the testimony of Craig
15 Geathers.

16 (Testimony of Craig Geathers played in open court.)

17 THE COURT: All right, ladies and gentlemen, that
18 concludes the testimony of Mr. Geathers in this case. I'm
19 going to send you back to the jury room and let you resume your
20 deliberations. Thank you very much.

21 (Whereupon, the following takes place outside the presence
22 of the jury. Jury exits at 4:12 p.m.)

23 THE COURT: All right, stand in recess until we get
24 something.

25 OFF THE RECORD

Verdict

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1 (On the record.)

2 (Whereupon, the following takes place outside the presence
3 of the jury. Verdict reached at 4:30 p.m.)

4 THE COURT: I understand that the jury has reached a
5 verdict; is that correct?

6 BAILIFF: They said they did.

7 THE COURT: All right, anything from the State before
8 we bring the jury in? Wait a minute. Let's get Mr. Geathers
9 in here. I'm sorry.

10 MR. FOX: Getting him right now, Your Honor.

11 THE COURT: Anything from the State before we bring the
12 jury in?

13 MS. COTÉ: No, Your Honor.

14 THE COURT: Anything from the Defense?

15 MR. FOX: No, Your Honor.

16 THE COURT: All right, let's bring the jury in.

17 (Whereupon, the following takes place in the presence of
18 the jury.)

19 THE COURT: All right, ladies and gentlemen, welcome
20 back. Mr. Gaither, I understand the jury has reached a
21 verdict?

22 MR. GAITHER: We have, Your Honor.

23 THE COURT: Is that on both indictments?

24 MR. GAITHER: Yes, sir.

25 THE COURT: All right, if you'd please hand the

Verdict

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1 indictments to the bailiff.

2 (Complies with request and Court reviews.)

3 THE COURT: All right, I'll ask the Clerk if the Clerk
4 will please publish the verdicts.

5 THE CLERK: Would the Defendant please rise?

6 (Complies with request.)

7 THE CLERK: Indictment number 2010-GS-22-172, The State
8 of South Carolina versus Craig Geathers, as to the charge of
9 kidnapping, we, the jury, by unanimous consent find the
10 Defendant guilty.

11 Indictment number 2010-GS-22-173, The State versus Craig
12 Geathers, as to the charge of armed robbery we, the jury, by
13 unanimous consent find the Defendant guilty.

14 Ladies and gentlemen of the jury, was this your verdict
15 and is it still your verdict? If so, please raise your right
16 hand.

17 (All jurors raise right hand.)

18 THE CLERK: Thank you.

19 THE COURT: All right, any polling of the jury by the
20 Defendant?

21 MR. FOX: Yes, Your Honor.

22 THE COURT: All right, ladies and gentlemen, the clerk
23 is - the Defense has requested polling of the jury, which means
24 the Clerk will ask you to stand one at a time and is going to
25 ask you two questions. The question is is this your verdict

Polling of Jury

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1 and is this still your verdict. So, when your name is called
2 if you would please stand and respond to the questions by the
3 Clerk of Court. Thank you very much.

4 THE CLERK: Mr. Thomas Gaither, would you please stand?
5 (Complies with request.)

6 THE CLERK: Mr. Gaither, was this your verdict and is
7 it still your verdict?

8 MR. GAITHER: Yes.

9 THE CLERK: Thank you.

10 Robbie Bellamy, was this your verdict and is it still your
11 verdict?

12 MR. BELLAMY: Yes.

13 THE CLERK: Thank you.

14 Edward Perry, was this your verdict and is it still your
15 verdict?

16 MR. PERRY: Yes.

17 THE CLERK: Thank you.

18 Kathleen Shamas, Shamas.

19 MS. SHAMAS: Shamas.

20 THE CLERK: Thank you. Was this your verdict and is it
21 still your verdict?

22 MS. SHAMAS: Yes.

23 THE CLERK: Thank you.

24 Barbara Flagg, was this your verdict and is it still your
25 verdict?

Polling of Jury

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1 MS. FLAGG: Yes.

2 THE CLERK: Thank you.

3 Debra Nicholson, was this your verdict and is it still
4 your verdict?

5 MS. NICHOLSON: Yes.

6 THE CLERK: Thank you.

7 Charlotte Plautz.

8 MS. PLAUTZ: Plautz.

9 THE CLERK: Plautz, was this your verdict and is it
10 still your verdict?

11 MS. PLAUTZ: Yes.

12 THE CLERK: Thank you.

13 Marcia Dase, was this your verdict and is it still your
14 verdict?

15 MS. DASE: Yes.

16 THE CLERK: Thank you.

17 Angela Hawkins, was this your verdict and is it still your
18 verdict?

19 MS. HAWKINS: Yes.

20 THE CLERK: Thank you.

21 Kenneth McGeorge, was this your verdict and is it still
22 your verdict?

23 MR. MCGEORGE: Yes.

24 THE CLERK: Thank you.

25 Deanna Justice, was this your verdict and is it still your

Polling of Jury

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1 verdict?

2 MS. JUSTICE: Yes.

3 THE CLERK: Thank you.

4 Donna Thatcher, was this your verdict and is it still your
5 verdict?

6 MS. TATCHER: Yes.

7 THE CLERK: Thank you.

8 Your Honor, the jury has been polled.

9 THE COURT: All right, thank you very much.

10 All right, ladies and gentlemen of the jury, thank you
11 very much for your service. That will conclude your service
12 not only on this case but for the remainder of the week. This
13 is the last trial we'll have this week, and I want to thank
14 each of you for your service this week. I know it's not easy
15 to sit as jurors but you did it very conscientiously, very
16 diligently and I thank you for your service. You're free to go
17 at this point in time. You will be disqualified from doing any
18 jury service for the next year, but you will have an exemption
19 for three years. I hope you don't exercise that exemption
20 because we do need jurors like you to serve in cases such as
21 this and I do want to thank you for your service. You're free
22 to go at this time and I hope everyone has a good evening.
23 Thank you very much. Everybody else please remain seated while
24 the jury is excused.

25 (Jury exits courtroom.)

Motions

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1 THE COURT: Any post-trial motions at this time?

2 MR. FOX: Yes, Your Honor, at this time I'd move for
3 a new trial on the following grounds: I believe the Court was
4 in error admitting both the photo array as well as the in-court
5 identification of the Defendant, in allowing the victim to
6 testify about statements the Defendant made, that he was going
7 to kill his girlfriend, over objection, also, for the
8 Solicitor's comments in closing, perhaps inadvertently, but
9 arguing facts that were not in evidence, specifically that
10 there was a police report that contained a statement from the
11 woman at the gas station that she had run back into the office
12 at the gas station and locked the door. I objected to that and
13 requested a mistrial during - after the jury sent out a
14 question that seemed to indicate that they were - that was an
15 important point for them and made that motion which Your Honor
16 denied, I believe that was in error, and for all those reasons
17 we would request a new trial, Your Honor.

18 THE COURT: All right, motions are noted. I'm going to
19 deny the motions and let the jury verdict stand.

20 MR. FOX: Thank you, Your Honor.

21 THE COURT: Any other motions at this time?

22 MR. FOX: No, Your Honor.

23 THE COURT: All right, any reason as to why we cannot
24 go forward and impose sentencing at this time?

25 MR. FOX: No, sir.

1 THE COURT: All right.

2 MS. COTÉ: No, Your Honor, we're prepared to go
3 forward at this time.

4 THE COURT: All right.

5 All right, Mr. Geathers, if you'd please stand.

6 (Complies with request.)

7 THE COURT: You have been convicted by a jury on both
8 the charges of armed robbery and kidnapping. I'd be more than
9 happy to hear from you or anybody that wants to speak on your
10 behalf at this time. Anything you'd like to say?

11 MR. GEATHERS: No.

12 THE COURT: All right.

13 All right, Mr. Fox, anything in mitigation?

14 MR. FOX: Yes, Your Honor.

15 Indicated Mr. Geathers has, has - he's testified. He's 44
16 years old, a native of New York City, has lived there all his
17 life with his mother. She's been in contact with me as has his
18 aunt here in Georgetown County.

19 Your Honor, he certainly does not have a history of this.
20 Your Honor has heard his prior record. He has a bribing an
21 official that he doesn't recall or disputes, but attempted
22 bribery. He has several petit larcenies from last year and
23 that's it. He doesn't have a history of this kind of thing.
24 So, I would ask the Court to keep that in mind. He has been
25 incarcerated in South Carolina since October of this past year.

1 I'd ask the Court to give him - he was held for about three or
2 four months in New York prior to coming down here, you know,
3 and they're aware there's a hold, but I would simply ask the
4 Court to give Mr. Geathers any credit that he's legally
5 entitled to, any pretrial detention time that he's entitled to
6 Your Honor.

7 THE COURT: All right.

8 All right, Ms. Coté, does the victim or anybody on the
9 victim's behalf want to say anything?

10 MS. COTÉ: No, Your Honor, the victim is not feeling
11 well. He had some health issues over the weekend. So, after
12 his testimony yesterday we sent him back to Columbia. I will
13 say that this - after speaking with him this has changed the
14 victim's life forever. You heard his testimony. He's not - he
15 was not able to go back to work in a taxi cab and he even moved
16 to Columbia to get away, in an attempt to get away from these
17 memories. It's truly changed his life and affected him. Due
18 to the violent nature of these crimes and, Your Honor, frankly
19 we're very fortunate that the victim was not hurt in this and
20 we're not trying a murder here today. I would ask for at least
21 a 20-year sentence, Your Honor.

22 THE COURT: All right, give me his prior record again.

23 MS. COTÉ: His prior record he has a 2001 malicious
24 injury to property. That was him breaking windows or kicking
25 in the door of Betty McCray's house. Then he has an attempt

1 to bribe a public servant in New York in 2004 and on the stand
2 he disputed that but it does show on his NCIC that he was
3 convicted of that, that he pled guilty on August 19th, 2004; a
4 petit larceny on December 10th, 2008, all of these petit
5 larcenies took place in New York, a petit larceny on December
6 22nd, 2008, a petit larceny on January 14th, 2008, another on
7 February 13th, 2009, another on March 8th, 2009. His record
8 shows two convictions for petit larceny on May 12th, 2009, both
9 with different incident dates, but he disputed that on the
10 stand, of course, a conviction for petit larceny on June 30th,
11 2009.

12 THE COURT: All right, Mr. Geathers, the sentence of
13 the Court on each charge, kidnapping and armed robbery is that
14 you be confined to the State Department of Corrections for 25
15 years. You'll be given credit for time served thus far and the
16 sentences will run concurrently.

17 MS. COTÉ: Thank you, Your Honor.

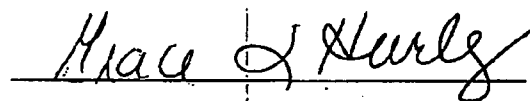
18 THE COURT: Thank you.

19 (Adjourned.)
20
21
22
23
24

C E R T I F I C A T E

I, the undersigned, Grace L. Hurley, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the hearing held in the case of The State versus Craig Geathers, held in the Court of General Sessions for Georgetown County, Georgetown County Courthouse, Georgetown, South Carolina, on June 21-23, 2010.

I do hereby certify that I am neither of kin, counsel, nor interest to any party hereto.



Grace L. Hurley, CVR-CM
Official Reporter

September 21, 2010.

FORM 5

STATE OF SOUTH CAROLINA
 County of George Town
Craig Gathers #341480
 Full name and prison number (if any) of Applicant

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

2013-CP-22-00475

APPLICATION FOR

POST-CONVICTION RELIEF

ALMA Y. WHITE
CLERK OF COURT

2013 MAY -2 PM 3:54

FILED
GEORGETOWN COUNTY, S.C.INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Lieber Correctional Institution
2. Name and location of Court which imposed sentence George town
County, Court of General Session
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2010 - GS - 22 - 172 Kidnapping
 - (b) 2010 - GS - 22 - 173 Armed Robbery

(c) _____
 5. The date upon which sentence was imposed and the terms of the sentence:

(a) 06/23/2010

(b) 06/23/2010

(c) _____

6. Check whether a finding of guilty was made:

(a) after a plea of guilty _____

(b) after a plea of not guilty ☒ _____

(c) after a plea of nolo contendere _____

7. Did you appeal from the judgment of conviction or the imposition of sentence?

yes

8. If you answered "yes" to (7), list:

(a) the name of each Court to which you appealed:

i. South Carolina, court of appeals

ii. South Carolina, court of appeals

iii. _____

(b) the result in each such Court to which you appealed:

i. Conviction Affirmed

ii. _____

iii. _____

(c) the date of each such result:

i. April 2, 2012

ii. _____

iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. Unpublished Opinion No 2012-UP-259

ii. _____

iii. _____

9. If you answered "no" to (7), state your reasons for not so appealing:

(a) _____

(b) _____

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) INEFFECTIVE ASSISTANCE OF COUNSEL
- (b) 5th Amendment Violations: Due Process Clause & Pre-Indictment Delay
- (c) 6th Amendment Violations: Right to Counsel & Compulsory Process
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) _____
- (b) _____
- (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? NO
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
- (d) any other petitions, motions or applications in this or any other Court? NO
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. N/A
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. N/A
- ii. _____
- iii. _____
- iv. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) N/A
 (b) _____
 (c) _____

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? NO
 (b) your trial, if any? Yes
 (c) your sentencing? Yes
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?
NO

18. If you answered "yes" to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:

i. _____

ii. J. ERIC Fox

210 Elm Street Suite 5, Conway, SC 29526

iii. J. ERIC Fox

210 Elm St. Suite 5, Conway, SC 29526

(b) the proceedings at which each such attorney represented you:

i. _____

ii. Trial

iii. Sentencing

19. State clearly the relief you seek in filing this application:

Vacating of Conviction and
dismissal of Charges

20. Are you now under sentence from any other court that you have not challenged?

NO

STATE OF SOUTH CAROLINA)

County of Georgetown)

VERIFICATION

I, Craig Gathers, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Craig Gathers

SWORN to and subscribed before me this 29th
day of April, 2013.

Luduan Bryant (L.S.)
Notary Public

My Commission Expires: May 26, 2020

FILED
GEORGETOWN COUNTY, S.C.
2013 MAY -2 PM 3:55
ALMA Y. WHITE
CLERK OF COURT

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, CRAIG GATHERS, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Craig Gathers
Applicant

SWORN or affirmed to and subscribed before me this
29th day of April, 2013.

Ludman Bryant
Notary Public

My Commission Expires: May 26, 2020

FILED
GEORGETOWN COUNTY, S.C.
2013 MAY -2 PM 4:03
ALMA Y. WHITE
CLERK OF COURT

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GEORGETOWN	)	
	)	
	)	
	)	2013-CP-22-0475
Craig Gathers, #341480,	)	
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

In response to the post-conviction relief application filed May 2, 2013, the Respondent would show this Court:

I.

The Applicant was indicted at the January 2010 term of the Georgetown County Grand Jury for armed robbery (2010-GS-22-0173) and kidnapping (2010-GS-22-0172). Eric J. Fox, Esquire represented him. The State proceeded to trial, and on June 23, 2010, Applicant was found guilty. The Honorable Benjamin H. Culbertson sentenced the Applicant to twenty-five (25) years imprisonment for each charge, sentences to run concurrently.

A notice of appeal was filed at the South Carolina Court of Appeals. Elizabeth A. Franklin-Best, Esquire of the South Carolina Commission on Indigent Defense perfected the appeal. The Court of Appeals affirmed the Applicant's conviction and sentences. State v. Craig Geathers, Op. No. 2012-UP-259 (S.C. Ct. App. filed May 2, 2012). The Remittitur was sent on May 18, 2012.

Attached herewith and incorporated herein by reference are the records of the

Georgetown County Clerk of Court regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, and the appellate records.

II.

In his application for post-conviction relief the Applicant alleges he is being held in custody unlawfully for the following reason:

1. Ineffective assistance of counsel.
2. "5th Amendment violations: Due Process Clause & Pre-indictment delay."
3. "6th Amendment violations: Right to Counsel & Compulsory Process."

III.

For purposes of this Return, Respondent interprets all allegations as claims of ineffective assistance of counsel.

The Respondent asserts the Applicant's allegation that his attorney was ineffective is without merit. The Respondent asserts the Applicant's attorney rendered effective assistance well within the standard of "reasonableness within professional norms" for a criminal defense attorney.

Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel "rendered adequate assistance and made all significant decisions in the exercise of reasonable

professional judgment.” Strickland, 466 U.S. at 690, 104 S. Ct. at 2066. The Applicant must overcome this presumption in order to receive relief. See Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove counsel’s performance was deficient. Under this prong, attorney performance is measured by its “reasonableness under prevailing professional norms.” Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S. Ct. at 2065). Second, counsel’s deficient performance must have prejudiced the Applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. “A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial.” Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984)).

The Respondent submits the Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (citing Norman v. State, 276 S.C. 278, 277 S.E.2d 707 (1981)).

IV.

The Respondent denies each allegation not expressly admitted, qualified or explained.

V.

WHEREFORE, having made its Return, the Respondent requests that a hearing be held

and counsel appointed to represent the Applicant.

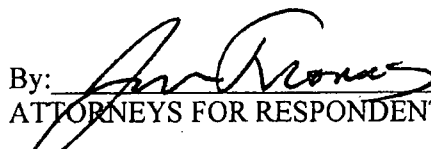
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

JOSHUA L. THOMAS
Assistant Attorney General
S.C. Bar No. 100777

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
Telephone: (803) 734-3737

9/18, 2013

STATE OF SOUTH CAROLINA)

COUNTY OF GEORGETOWN)

IN THE COURT OF COMMON PLEAS

2013-CP-22-0475

CRAIG GATHERS, #341480)

Applicant,)

vs)

AFFIDAVIT OF SERVICE BY MAIL

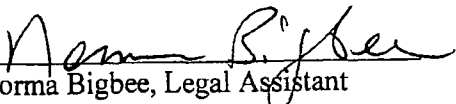
STATE OF SOUTH CAROLINA,)

Respondent.)

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Tristan M. Shaffer, Esquire
1928 Barnwell St.
Columbia, SC 29201

DATED this 18TH day September, 2013.


 Norma Bigbee, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
) FIFTEENTH JUDICIAL CIRCUIT
 COUNTY OF GEORGETOWN) CASE NO.: 2013-CP-22-475

CRAIG GEATHERS,)
)
 APPLICANT,)
)
 VS.)
)
 STATE OF SOUTH CAROLINA,)
)
 RESPONDENT.)

POST CONVICTION RELIEF HEARING

held before the Honorable Kristi L. Harrington
 Mia Perron, Circuit Court Reporter, 9th Judicial Circuit
 in the Georgetown County Courthouse
 Georgetown, South Carolina
 on August 28, 2014, and August 29, 2014

SUSAN "MIA" PERRON, CVR-CM-M
 Circuit Court Reporter - 9th Judicial Circuit
 Post Office Box 31865
 Charleston, South Carolina 29417-1865
 1-706-231-6028

APPEARANCES OF COUNSEL

FOR THE APPLICANT: Tristan Shaffer, Esquire
Axelrod & Associates
4701 Oleander Drive
Myrtle Beach, South Carolina 29577

FOR THE RESPONDENT: Joshua L. Thomas, Esquire
Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211-1549

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EXHIBITS

[None]

Geathers v. State of South Carolina
Post Conviction Relief Hearing
August 28, 2014

PROCEEDINGS

- - - - -

August 28, 2014

Commencing at 5:51 p.m.

- - - - -

THE COURT: Mr. Shaffer?

MR. THOMAS: Yes? Yes, Your Honor?

THE COURT: Have you let somebody in your office
know to let the witnesses know to come here in the
morning?

MR. SHAFFER: No, Your Honor. He just gave me
the information, the contact information.

THE COURT: Okay.

MR. SHAFFER: I don't have it with me, but I
will call her to get her to come here.

THE COURT: It's just one?

MR. SHAFFER: Yes, Your Honor.

THE COURT: Who is it, his mom or --

MR. SHAFFER: His aunt.

THE COURT: Aunt?

Are you Craig Gathers?

MR. GATHERS: Yes, ma'am.

THE COURT: All right. We are here today on
your application for post conviction relief. Is
Mr. Shaffer your attorney?

MIA PERRON, CVR-CM-M

-4-

Geathers v. State of South Carolina
Post Conviction Relief Hearing
August 28, 2014

1 MR. GATHERS: Yes, ma'am.

2 THE COURT: Do you need any additional time to
3 meet with him? You met with him just a few minutes
4 ago. Do you need anything else? Are you ready to go
5 forward here today?

6 MR. GATHERS: I think we need more time, because
7 we just met today --

8 THE COURT: This is the first time --

9 MR. GATHERS: -- and we never had any time --

10 THE COURT: Hold on. This is the first time
11 you've met?

12 MR. GATHERS: Yes. The first.

13 MR. SHAFFER: That's correct.

14 THE COURT: Is that correct, Mr. Shaffer?

15 MR. SHAFFER: That's correct, Your Honor.

16 THE COURT: Mr. Shaffer, are you telling me
17 you're not prepared to go forward?

18 MR. SHAFFER: Your Honor, I asked for a
19 continuance on one ground. It turns out there is no
20 conflict, Your Honor. I would ask for a continuance,
21 though, regardless. But there is no conflict, Your
22 Honor. I expect to -- I trust that there is no
23 conflict.

24 THE COURT: All right. What is your position as
25 to a continuance, Mr. Thomas?

Geathers v. State of South Carolina
Post Conviction Relief Hearing
August 28, 2014

1 MR. THOMAS: The State is prepared to proceed,
2 Your Honor. I would note -- the State is ready to
3 proceed, Your Honor.

4 THE COURT: Mr. Shaffer, on what grounds are we
5 going forward here today?

6 MR. SHAFFER: Your Honor, I think there's
7 ineffective assistance of counsel, there's a
8 confrontation violation, there's a failure to
9 investigate, failure to talk to witnesses. That's
10 essentially it, Your Honor.

11 I think I've gone through some of the other
12 claims. I don't believe that they're -- he had sent
13 me a long letter outlining claims in July. I have not
14 responded to all those claims. I did, you know, have
15 the letter in my possession and looked at the other
16 issues. I have not responded to all of those. Some
17 of them are probably worth going forward on and some
18 are not, Your Honor.

19 THE COURT: Mr. Gathers, I'm denying your
20 request for a continuance at this time.

21 You understand that you were indicted and found
22 guilty of armed robbery, which is punishable by ten to
23 thirty years, and Judge Culbertson sentenced you to
24 twenty-five years on that charge. Do you understand
25 that?

Geathers v. State of South Carolina
Post Conviction Relief Hearing
August 28, 2014

1 MR. GATHERS: Yes, ma'am.

2 THE COURT: And you were also found guilty by a
3 jury trial for kidnaping, which is punishable by up to
4 thirty years. Judge Culbertson sentenced you to
5 twenty-five years and he ran those concurrently. Is
6 that correct? So you're serving --

7 MR. GATHERS: Yes.

8 THE COURT: -- a twenty-five-year sentence?

9 MR. GATHERS: Yes.

10 THE COURT: Is that a yes?

11 MR. GATHERS: [No response]

12 THE COURT: And you understand that should I
13 grant your application for post conviction relief,
14 this charge does not go away? You're not going to
15 walk out of here today. It simply means that you're
16 going to go back to Horry County --

17 Right? This was an Horry County case, or was
18 this -- this is a Georgetown.

19 -- and that the solicitor will simply try you.
20 So you are actually facing sixty years in the
21 department of corrections. Do you understand that?

22 MR. GATHERS: I did not know that.

23 THE COURT: Mr. Shaffer, if you would explain
24 that to him, as well.

25 And you may have a seat.

Geathers v. State of South Carolina
Post Conviction Relief Hearing
August 28, 2014

1 Mr. Gathers, I noticed your max-out date is
2 2031. 2031.

3 [Whereupon, Mr. Shaffer and Mr. Gathers confer]

4 THE COURT: Mr. Gathers, do you still wish to go
5 forward on your application?

6 MR. GATHERS: Yes, ma'am.

7 THE COURT: Call your first witness.

8 MR. SHAFFER: The applicant calls Eric Fox.

9 [Whereupon, Mr. Fox comes forward]

10 [Whereupon, Mr. Fox is duly sworn by the clerk
11 of court as follows: do you solemnly swear or affirm
12 that the testimony you're about to give will be the
13 truth, the whole truth, and nothing but the truth, so
14 help you God]

15 THE WITNESS: I do.

16 [Whereupon, Mr. Fox takes the witness stand]

17 THE CLERK OF COURT: State your name, please.

18 THE WITNESS: My name is Eric Fox.

19

20

21

22

23

24

25

- - -

- - -

- - -

Eric Fox
Direct Examination by Mr. Shaffer
August 28, 2014

ERIC FOX,

Having Been First Duly Sworn,
was Examined and Testified as Follows:

DIRECT EXAMINATION

BY MR. SHAFFER:

Q. Mr. Fox, if you could tell us about -- you represented Craig Gathers; correct?

A. I did, yes.

Q. And tell us about the allegations against Craig Gathers.

A. Mr. Gathers was accused of an armed robbery, a kidnaping. I don't recall whether he had possession of a weapon during a violent crime, the warrants.

Basically, he was accused of robbing a cab driver, that he had taken him on a -- he had picked up -- got the cab out of North Charleston, I believe, or at least Charleston County, requesting to go a good bit of distance -- the cab driver even had -- up to Georgetown County. The cab driver even had to call back and get permission to do that. Gave him -- Mr. Gathers gave him half the fare up front.

They made a couple of stops. And it was in Georgetown where the driver alleged that he was -- alleged that he was threatened along the way at gun point and was eventually robbed of some amount of money in Georgetown

Eric Fox
Direct Examination by Mr. Shaffer
August 28, 2014

1 County. The car ran off the road, actually, and crashed,
2 at which point Mr. Gathers left and the cab driver was
3 able to get out, get away from him.

4 Q. And I know you have the cab driver but --

5 A. Right.

6 Q. -- on top of that, who was there to identify
7 Mr. Gathers?

8 A. The only person -- and the one thing to know, of
9 course, this case the warrant was eight or nine years old
10 by the time -- I think it was a 2001 incident, maybe 2000,
11 even. Went to trial, you know, nine years later.

12 There's a cab driver and there was -- that
13 was it. There was an in-court identification from his
14 ex-girlfriend.

15 Q. And what was the in-court identification from
16 his ex-girlfriend? You said that -- you said in-court.
17 Did they not show her any line-up ahead of time?

18 A. I don't recall. That would be in the
19 transcript. I don't -- they probably did. I don't
20 recall.

21 Q. And speaking of a line-up in this case, they
22 showed a black-and-white line-up; correct?

23 A. I believe that's correct.

24 Q. And what -- if you could, do you recall the
25 descriptions given of who did this?

Eric Fox
Direct Examination by Mr. Shaffer
August 28, 2014

1 A. I don't off the top of my head. It wasn't -- I
2 know there was some description of clothing. I know --
3 but I do know I was confused, what was in the description
4 of the police report and what was testified to and,
5 frankly, I'm not positive.

6 But there was a description of a black male in
7 some clothing. I know at trial the cab driver testified
8 about an Iowa tee-shirt, I believe. I don't recall
9 whether that was in the original description or not.

10 Q. You said it took eight years to go to trial?

11 A. Yes.

12 Q. Were you the attorney the entire time?

13 A. No. I was appointed in November of 2009.

14 Q. Okay. Tell us about the investigation you did
15 in this case.

16 A. Our files show that I was -- that we opened a
17 file in November 20th, 2009, within -- actually, before we
18 ended up in court, as part of that.

19 Then, at that time, we had a full-time office
20 here in Georgetown and I was one of the contract attorneys
21 with the public defender's office. But the secretary here
22 would open the file and send a Brady motion, a discovery
23 motion. That was done the day we opened the file. So
24 November 20th.

25 On December the 8th -- so about three weeks

Eric Fox
Direct Examination by Mr. Shaffer
August 28, 2014

1 later, before we had received discovery, I went and met
2 with Mr. Gathers at the detention center. We discussed,
3 in fact, the photo line-up, the fact that we needed -- I
4 needed to make sure I had the written statement of the
5 victim because that was going to be the whole -- or at
6 least the major factor in the case was the cab driver's
7 statement and his testimony. When we did get discovery,
8 that was sent to Mr. Gathers. That was in March of 2010.

9 Later in -- just a couple of weeks later in
10 March, the end of March, we met -- we used to go out and
11 have days where we would go -- the solicitors and the
12 public defenders would go and meet and discuss. At that
13 time we had discovery and -- Mr. Gathers had, and we
14 did -- although not ready to give an answer, we did have a
15 plea offer of twelve years; if he would plead to the armed
16 robbery, they would dismiss the kidnaping. Discussed that
17 with Mr. Gathers.

18 At that time we also had -- we had a face-to-
19 face with the solicitor, myself and the solicitor, and
20 then Mr. Gathers and I had a chance to talk a little bit
21 then.

22 He, from the first time I met him, had
23 absolutely no interest in pleading guilty. He said, that
24 was not me. So that was the -- from the beginning was
25 looking at almost certainly going to trial.

Eric Fox
Direct Examination by Mr. Shaffer
August 28, 2014

1 There were phone calls with his mother,
2 obviously, reviewing the discovery. It was clear that the
3 cab driver was going to be the main witness, pretty much
4 the only witness.

5 Mr. Gathers gave me the names of three people.
6 And I don't know exactly when he did that, but he did give
7 me the names of three people that he thought were
8 important. One was his aunt, who he was living with when
9 the police came to serve the warrant. I believe that was
10 Ms. Scarborough. She had a -- she had remarried, but what
11 I remember her as was Ms. Scarborough. And he provided me
12 a number for her and I was able to be in touch with her.
13 There was a cousin of his, a Mr. Vereen. And then there
14 was the mother of his ex girlfriend.

15 His ex-girlfriend, that was the house they
16 stopped with -- stopped at during that evening; that he
17 instructed the cab driver to stop at the ex-girlfriend's
18 house. She lived with the mother. I don't recall that
19 lady's name off the top of my head, but he had given me
20 her name.

21 Although the investigation, other than reading
22 the investigative report and the statement -- and the
23 witness statement was, you know, a handwritten statement,
24 not very long, a page or so -- was trying to contact these
25 witnesses. Mr. Gathers indicated --

Eric Fox
Direct Examination by Mr. Shaffer
August 28, 2014

1 Well, I'll say this. When I first met -- I was
2 reviewing my notes this morning. The notes I had with my
3 first interview with Mr. Gathers was that it was very,
4 very hard to get -- I took the trouble to write that down
5 -- it was very hard to get information from him, partly
6 because he simply couldn't remember. It was eight or nine
7 years ago. But it was very difficult to review the
8 material with him. And that continued to be a problem in
9 terms of what is it that these witnesses are going to tell
10 me.

11 Eventually, we filed a speedy-trial motion at
12 his request in May. The judge said try it by the end of
13 the year. By June, it was on the trial calendar so that's
14 when things kicked into high gear.

15 I sent an investigator from the public
16 defender's office, Jerome Randall, to try to find
17 witnesses and serve subpoenas because I was at least going
18 to subpoena these three witnesses. We were able to serve
19 subpoenas on Ms. Scarborough and his cousin, Mr. Green. I
20 was able to eventually talk to both of them by phone. I
21 did not speak --

22 No. Ms. Scarborough I did speak face-to-face.
23 She simply -- again, this was eight or nine years ago --
24 simply didn't really remember anything. I was trying to
25 ask her about a particular evening from 2001. I didn't

Eric Fox
Direct Examination by Mr. Shaffer
August 28, 2014

1 find -- a very nice lady, but did not find her to be
2 really helpful to Mr. Gathers' case in any way.

3 Mr. Vereen, although, again, a particular day he
4 was not positive of his actions, was pretty sure that he
5 had been living with -- visiting family in North Carolina
6 during that period of time and that he was not even
7 around. Mr. Gathers indicated that he would have been in
8 the Georgetown County area. I never was clear exactly
9 what Mr. Vereen was supposed to add to it, but, again, he
10 was a name I was given so I did track him down. He said,
11 I really don't remember much, that was a long time ago,
12 and, besides, I was in North Carolina. So that we didn't
13 -- we were able to have him served with a subpoena. I
14 believe he was in Horry County. I did not intend to call
15 him as a witness.

16 The mother of the ex-girlfriend lived I want to
17 say in Berkeley County, kind of where Georgetown and
18 Charleston and Berkeley meet. And I sent Mr. Randall down
19 there. We did have an address. We knew where she lived.
20 I sent Mr. Randall down there. He was able to -- she was
21 not home, so he was unable to serve the subpoena. He
22 determined -- he asked around in the neighborhood and
23 determined that she worked in a -- some kind of business
24 down the road. I wasn't sure if it was a restaurant. I
25 don't recall if it was a restaurant or what it was

Eric Fox
Direct Examination by Mr. Shaffer
August 28, 2014

1 exactly, but nearby. He went down there to see if she was
2 there and she was not, and he left his contact
3 information. This would have been about a week before
4 trial.

5 I know Mr. Randall and myself continued to try
6 to locate. Eventually we turned that subpoena over to
7 Berkeley County police or sheriff's department to see if
8 they could serve it and they had the same issue, that they
9 were never -- they just -- the times they were attempting
10 to serve, she wasn't around.

11 I know that Berkeley County police were doing
12 that during the week of trial, so that was very -- like I
13 say, we brought them in because we were having no luck and
14 that was sort of a last-ditch effort to see if they would
15 have anymore luck than we did. They were never able to.
16 I spoke to them by phone during the week of trial, before
17 our case -- before our portion of the case came up. So
18 that witness, never able to get. She was the mother of
19 the ex-girlfriend.

20 The ex-girlfriend provided an in-court
21 identification of Mr. Gathers. She had been dating him
22 shortly before this time. They had had, in her version of
23 events, a very nasty breakup.

24 The cab driver also indicated that during their
25 ride Mr. Gathers had said, you know, I need you to take me

Eric Fox
Direct Examination by Mr. Shaffer
August 28, 2014

1 to the girlfriend's house, I'm going to kill her. In
2 fact, they did go by the house, although she was not --
3 well, that was disputed whether he got out there or not.

4 But my feeling was that without having spoken to
5 the ex-girlfriend's mother, that she probably was not
6 going to be particularly friendly towards my client. But
7 I didn't ever actually speak to her.

8 The trial, though, there were I think two police
9 officers that testified and then one who went to serve the
10 warrant in New York on him, and then the cab driver, we
11 had focused on that.

12 So the investigation was mostly going through the
13 material we already had speaking with Mr. Gathers.

14 Q. Did you -- you fully advised him of what he was
15 facing on the charge?

16 A. Absolutely.

17 Q. Did he ever offer an explanation as to why the
18 girlfriend would be lying about him?

19 A. Well, they had broken up. He did not describe
20 it as quite the same. The information I was getting
21 through the solicitor was that it had been very nasty.
22 That was how it was characterized. She did not seem
23 particularly happy with him when she came to testify. She
24 described it I think from the witness stand as nasty.
25 Actually, that was her word.

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1 Mr. Gathers said -- his comments to me was that
2 he did seek to go see her because he thought they might be
3 able to get back together. There was an issue about a
4 bill or something, as I recall. There was something he
5 needed to take to her or get from her, was his explanation
6 for why he would go -- needed to go by the house that
7 evening.

8 Q. Did you raise any problem with -- at any point,
9 did you raise any problem with line-up because it was in
10 black-and-white?

11 A. I don't know if I did on that. The transcript
12 would show.

13 I know that there was a hearing on the line-up
14 and I made objections, but I don't know if that particular
15 reason was given to object to it.

16 Q. Did you ever make an argument -- or you didn't
17 argue that -- well, let me ask you this first. Do you
18 recall a description that included freckles?

19 A. I don't. I'm not saying there wasn't, but I
20 don't recall that specifically.

21 Q. Okay. It's safe to say that the arguments you
22 made -- would you have made any concerning the line-up
23 outside the transcript, or would the transcript have
24 everything --

25 A. It would have everything that was argued.

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1 Certainly.

2 Q. Okay. Now, do you have a copy of the transcript
3 right now?

4 A. I do.

5 Q. I'm going to have you turn to page 89.

6 A. 89?

7 Q. Yes. Or, I'm sorry. 91.

8 A. Okay. All right.

9 Q. And at this point, you were objecting in the
10 transcript; correct?

11 A. Yeah. That appear -- yeah. That was during the
12 trial itself.

13 Q. That was after --

14 A. We had already had the --

15 Q. After your --

16 A. That's correct. Yes, I did object to it.

17 MR. SHAFFER: Court's indulgence.

18 Q. [Mr. Shaffer] Okay. And do you recall Ruby
19 Alman?

20 A. [No response]

21 Q. Well, first of all, what happened when you got
22 to the girlfriend's house?

23 A. Mr. Gathers said that he had gotten out. And I
24 think Ms. Alman was the girlfriend's mother. That was the
25 name I was able -- not able to recall.

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1 Mr. Gathers indicated that he had gotten out and
2 spoken to Ms. Alman.

3 Q. And she did not indicate that at trial; correct?
4 Or did she testify at trial?

5 A. If you can give me a moment, I can tell you.
6 There was another witness and, frankly, I can't --

7 Q. If you could go to page 87, that might help you
8 out a little bit.

9 A. Okay.

10 Q. Jonathan -- that's the testimony of Jonathan
11 Lambert; correct?

12 A. Yes.

13 Q. And Jonathan Lambert was the officer
14 investigating this --

15 A. That's correct.

16 Q. -- case; correct?

17 A. That is correct.

18 Q. And if you could look from 15 down to the end of
19 the page.

20 A. Yes.

21 Q. And that's discussing what Ms. Alman had told
22 Jonathan Lambert; correct?

23 A. It does.

24 And to answer your previous question, Ms. Alman
25 did not testify at trial.

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1 Q. Did you make any objection to that, that you
2 recall?

3 A. It would be in the record. I don't believe that
4 I did. They got back into line-ups. I'm looking ahead.
5 I did a -- there was another line-up procedure. But not
6 to statements Ms. Alman made to the officer.

7 MR. SHAFFER: Court's indulgence.

8 THE COURT: Take your time.

9 [Whereupon, Mr. Shaffer and Mr. Gathers confer]

10 A. And then after reviewing that page, it also
11 appeared about the only thing that the officer relayed
12 from Ms. Alman was that she verified her daughter had
13 dated Mr. Gathers, which we -- that was not an issue in
14 dispute, from our point of view.

15 Q. [Mr. Shaffer] But she also had claimed that she
16 -- I apologize.

17 She had also claimed that she had been at work
18 during that time period; correct?

19 A. Give me a moment.

20 [Whereupon, the witness reviews documents]

21 A. I don't -- if you could point me to some
22 specific. I don't recall that, and I don't see that.

23 Q. Okay.

24 A. The officer talks about that she was working
25 when he went to find her and he found her at the Country

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1 Store down the road.

2 I don't recall any statement that Ms. Alman said
3 that she was at work on the evening this happened, at
4 least not from Officer Lambert.

5 Q. What was your -- what was your defense strategy
6 going into the case?

7 A. Well, we didn't have an alibi. We never served
8 notice of alibi.

9 Q. When was he indicted?

10 A. I would have to review it and see.

11 Q. That's okay. It's in the record.

12 A. Yeah, it's in the -- I'm not sure. I believe it
13 was not until shortly before trial. I mean, I don't think
14 there was an indictment out there. That's my
15 recollection, that it was shortly before he was actually
16 tried.

17 Q. But you said that you -- and I interrupted you.
18 But you said that --

19 A. Well, this was one of those I think was a little
20 bit more about looking at the identification being an
21 issue, calling into question the reliability and
22 believability of Mr. King, who was the cab driver. You'll
23 see in the record issues about time lines about when he
24 was called and what he did.

25 I kind of suspect -- that Mr. Gathers never

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1 explicitly said this, but I kind of suspect that maybe
2 Mr. King was not working by the rules of his company and
3 that maybe he was either working off the books or he was
4 up to no good or maybe -- I'll use the word joyriding with
5 Mr. Gathers. And so I felt like maybe he wasn't being
6 entirely truthful about how all this had happened. So
7 that was part of the strategy.

8 I also thought there were issues about the
9 identification which were raised. I did a good bit of
10 research on photo line-ups and so forth and photo arrays.

11 So a lot of it -- again, because of the age,
12 there was not -- there wasn't an alibi defense.

13 Q. There wasn't a whole lot of leads?

14 A. There wasn't a whole lot. It really was more
15 about the inadequacy of the proof against him.

16 Q. Okay. And so you looked into the possibility of
17 an alibi but --

18 A. Well, I --

19 Q. -- due to the age --

20 A. Yeah.

21 Q. -- there was nobody out there to --

22 A. No.

23 Mr. Gathers -- again, and it's perfectly
24 understandable, he had a hard time -- now, he could
25 remember the cab -- Mr. Gathers did not deny being in the

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1 cab. He denied robbing the man. So it was more an issue
2 of it really wouldn't have been an alibi case anyway.

3 Maybe it happened -- we did go into the time
4 line because perhaps it happened sometime after -- this
5 robbery happened after Mr. Gathers was no longer with the
6 cab driver. But Mr. Gathers did not deny being in the
7 cab. He verified he was picked up in North Charleston and
8 went by the ex-girlfriend's house and that they stopped at
9 the gas station and all those things. He disagreed with a
10 lot of the particulars. And he absolutely said, I didn't
11 rob anybody.

12 But that wasn't an issue. An alibi really
13 wasn't an issue in the end.

14 MR. SHAFFER: No further questions.

15 THE COURT: Mr. Thomas?

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Eric Fox
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CROSS-EXAMINATION

BY MR. THOMAS:

Q. Mr. Fox, if you could just, for the record, give us sort of an overview of your experience as a criminal lawyer.

A. Yeah. I was admitted to the bar in 1990 and since 1994 I've practiced almost exclusively in criminal law. For eighteen years was one of the contract public defenders here in Georgetown County. The last two and a half I've been in the Horry County public defender's office. So about twenty years as a criminal lawyer and twenty-four as a lawyer.

Q. Do you recall -- well, let me ask you this. Do you feel like you've had enough opportunities to meet with Mr. Gathers to be prepared for his trial?

A. I did.

In addition to the times that were asked a moment ago, there were a couple of other -- my notes show another lengthy interview with Mr. Gathers, at the detention center, that was over two hours. Spent a lot of time researching some of the issues involved. I felt it was a fairly straightforward case. Either Mr. King could remember accurately or he couldn't. We did make the efforts to locate the witnesses Mr. Gathers wanted us to try to find. I did feel like I had enough time to prepare.

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1 Q. And just so we're clear, the reason this case
2 took eight years to come to trial was because Mr. Gathers
3 was in New York the entire time?

4 A. That's correct. And that's where he was from.
5 I mean, he had some family down here and he had been --
6 but he lived in New York, he worked in New York, so
7 that -- I never felt that he fled to New York. There
8 wasn't anything to show that he fled to New York.

9 But that's exactly right. He was not located
10 until 2009, when they finally went up and served the
11 warrant on him.

12 Q. And in the time that you did get to meet with
13 him, you went over every piece of evidence that the State
14 had against him?

15 A. Yes.

16 Q. And you discussed with him basically what your
17 trial strategy was going to be to attack the credibility
18 and whatnot?

19 A. Well, we discussed that, among others. I mean,
20 like I say, we just -- he raised some issues with, you
21 know, the reason he went and how it was, what happened
22 when he went to the girlfriend's house or what happened at
23 the gas station. I think those things were brought out
24 through cross-examination, certain particulars, because he
25 reviewed and he would point out things he felt were key in

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1 the evidence, in the police report witness statements. So
2 we explained right up -- you know, that was discussion
3 through trial whether we would call the witnesses or not
4 to testify.

5 Q. And basically his version of what the events
6 that transpired, he got on the stand and testified to that
7 at trial?

8 A. He did not testify. In the end, he chose not
9 to. Unless he changed his mind. I honestly don't recall.

10 Q. If I showed you the transcript, would that help
11 you remember?

12 A. It would very much. I know initially there was
13 a discussion about him not.

14 And I apologize. I did not review the
15 transcript, obviously, before --

16 Q. Let me just --

17 A. Okay.

18 Q. You've got a copy of it. Let me just direct you
19 to page 158.

20 A. Yes, sir.

21 Q. And that would be I guess lines 19 through 21.
22 And after you've looked at that, I'll ask you again.

23 A. I recall without even reading the whole thing.

24 He initially -- he didn't have a bad -- he had
25 some record they could ask him about. Nothing serious. I

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1 didn't feel like that would be a problem with him
2 testifying. I know we discussed all along his right to
3 testify, his absolute right to testify and consequently he
4 would expose himself to cross-examination, et cetera.

5 My recollection was he did not particularly wish
6 to. When we got to the event in trial, I let him know
7 that one witness we could not locate. Another, his aunt,
8 who was present in the courthouse, I felt simply didn't
9 add anything because she simply couldn't remember. And I
10 let him now -- and I had let him know about Mr. Vereen,
11 his cousin, as soon as we learned. But, again, I didn't
12 intend to have Mr. Vereen come because I didn't feel he
13 had any knowledge at all about this.

14 And you can see then that Judge Culbertson had a
15 colloquy with Mr. Gathers about that. Mr. Gathers
16 disagreed about whether I would call the witnesses. But I
17 indicated this was one time when I was going to pull rank
18 and not call them, use my discretion as a lawyer. And at
19 that point, then Mr. Gathers reconsidered and chose to
20 testify. And he told the Court he felt that he had no
21 option at that point. But he did, in fact, testify.

22 Q. And his testimony was consistent with everything
23 he told you up to that point?

24 A. I recall that it was. I don't remember anything
25 being different at all than what he had been telling me.

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1 Q. And as far as the statements that were made by
2 Detective Lambert about Ms. Alman and what he had gathered
3 from talking to her, did you see anything objectionable
4 about that? I mean, why didn't you object, at that point,
5 to hearsay or anything on those grounds?

6 A. Well, the only thing that -- and that -- you
7 know, the only thing the transcript shows and I recall is
8 that, you know, he was -- I think he was really looking
9 for the daughter and the -- you know, Mr. Gathers' ex-
10 girlfriend and the only thing he indicated was that
11 Ms. Alman verified that her daughter in fact lived with
12 her back in 2001 and that she had dated Mr. Gathers. And
13 we didn't dispute that they had dated or that she -- that
14 her daughter lived with her. I mean, it wasn't -- so even
15 if it was hearsay, it just wasn't an issue.

16 Q. So, I mean, that was consistent with your theory
17 of the case anyway?

18 A. Sure. It was.

19 Q. And all -- and Detective Lambert's discussions
20 with her, that was in the process when the police were
21 trying to locate Mr. Gathers?

22 A. I believe that's correct. And then they also --
23 because they had information, description that Mr. King,
24 the cab driver had been shown a line-up within three or
25 four days. So I think it was basically trying to verify,

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1 number one, who it was they were looking for and they had
2 information it was Craig Gathers. And that was the
3 context.

4 Q. And the last thing, and then I'll turn it back
5 over for any redirect. I just want to make clear: you
6 objected to the introduction of the line-up and actually
7 any identification based on that as a suggested line-up?

8 A. Yes.

9 Q. And you renewed that when the line-up was
10 actually introduced?

11 A. I did. And I think there was a couple of other
12 points, because then it -- part of the objection was that
13 the in-court identification, particularly being so long
14 after -- obviously, the cab driver is going to come in and
15 say, yeah, that guy sitting next to the defense attorney
16 is the guy that robbed me. That's -- never seen it to be
17 otherwise. It's always the man at the defense table.

18 But my argument in part was that it was
19 bootstrapping at that previous line-up because of problems
20 with it, and if that was impermissible then the in-court
21 identification was going to be impermissible and then
22 pretty much the case is gone at that point.

23 Q. And so you objected to the in-court ID, as well?

24 A. I believe I did. The transcript would show that
25 I believe I did.

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1 MR. THOMAS: Thank you, Mr. Fox. That's all I
2 have.

3 MR. SHAFFER: No questions, Your Honor.

4 THE COURT: You may step down. Thank you.

5 [Whereupon, Mr. Fox is excused and exits the
6 witness stand]

7 THE COURT: Call your next witness.

8 MR. SHAFFER: Your Honor, may we approach,
9 please?

10 THE COURT: You may.

11 [Whereupon, an off-the-record bench conference
12 is held]

13 THE COURT: We will continue this matter in the
14 morning, so please make sure that he is not taken,
15 that he remains here in Georgetown. All right?

16 Mr. Gathers, we'll see you in the morning.

17 Is the correct spelling of your last name G-E-A-
18 T-H-E-R-S?

19 MR. GATHERS: No. One E.

20 THE COURT: It's just one E, no A?

21 MR. GATHERS: Yeah. It's the last E. Not the E
22 after the G.

23 THE COURT: How about you start for the -- it's
24 late. Tell me how you spell it.

25 MR. GATHERS: G-A-T-H-E-R-S.

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1 THE COURT: All right. Thank you so much. See
2 you in the morning.

3 Any objection to Mr. Fox leaving?

4 MR. SHAFFER: None, Your Honor.

5 THE COURT: Thank you.

6 [HEARING ADJOURNS AT 6:26 P.M.]
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Gathers vs. State of South Carolina
Post Conviction Relief Hearing
August 29, 2014

PROCEEDINGS

- - - - -

August 29, 2014

Commencing at 8:52 a.m.

- - - - -

THE COURT: Good morning, Mr. Gathers. How are
you?

MR. GATHERS: Okay. Good morning.

THE COURT: Good morning.

All right. Mr. Shaffer, we're ready to get
started?

MR. SHAFFER: Yes, Your Honor. The applicant
calls Craig Gathers.

THE COURT: Mr. Gathers, if you'll please come
forward and be sworn.

[Whereupon, Mr. Gathers comes forward]

THE BAILIFF: I know it's going to be difficult,
but put your left hand on the Bible and turn around
and then raise your right hand the best you can and
face that way.

[Whereupon, Mr. Gathers is duly sworn by the
clerk of court as follows: do you solemnly swear or
affirm that the testimony you are about to give will
be the truth, the whole truth, and nothing but the
truth, so help you God]

Gathers vs. State of South Carolina
Post Conviction Relief Hearing
August 29, 2014

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THE WITNESS: Yes.

THE CLERK OF COURT: State your name, please.

THE WITNESS: Craig Gathers.

THE CLERK OF COURT: You may have a seat.

[Whereupon, Mr. Gathers takes the witness stand]

Craig Gathers
Direct Examination by Mr. Shaffer
August 29, 2014

CRAIG GATHERS,

Having Been First Duly Sworn,
was Examined and Testified as Follows:

DIRECT EXAMINATION

BY MR. SHAFFER:

Q. Mr. Gathers, where do you currently reside?
Where do you currently living -- or living at? What
prison?

A. Lieber Institution.

Q. Okay. How long have you been at Lieber?

A. Since September, 2010.

Q. Okay. How long of a sentence are you currently
doing?

A. The judge sentenced me to twenty-five years.

Q. And it's twenty-five days [sic] and it's -- when
is your projected release date?

A. 2032, I think. '31.

Q. Where are you from originally, sir?

A. I was born and raised in New York City.

Q. Okay. Where were you living in 2001?

A. New York City.

Q. And where were you living -- did you ever come
down to South Carolina?

A. Yeah. I have family down here in South
Carolina. I'm back and forth to my family.

Craig Gathers
Direct Examination by Mr. Shaffer
August 29, 2014

1 Q. And you dated a girl down here; correct?

2 A. Yeah. At one time, yes.

3 Q. Around the time that this allegedly happened,
4 who were you dating?

5 A. Betty McCray.

6 Q. And you ended up breaking up with Ms. McCray.
7 When did you break up with Ms. McCray?

8 A. We both agreed to go our separate ways in August
9 of 2001, I believe.

10 Q. After that, how often did you come to South
11 Carolina?

12 A. I came whenever my family wanted me to come down
13 or I wanted to come down.

14 Q. About how often would you say, if you had to
15 estimate, over the next eight-year period?

16 A. I mean, it wasn't enough that -- it was just if
17 I felt like coming down, I came down, you know.

18 Q. Were you aware that the police were looking for
19 you?

20 A. No, I wasn't.

21 Q. Okay. When did you become aware of that?

22 A. When they told me in May of 2001.

23 Q. In May of 2001, you were aware that the police
24 were looking for you?

25 A. Yeah. I was arrested in New York. They told me

Craig Gathers
Direct Examination by Mr. Shaffer
August 29, 2014

1 then.

2 Q. And what happened at that point? Well, let me
3 say this. You were arrested in New York. When did you go
4 to trial on this?

5 A. June of 2010.

6 Q. What happened over that time period between May
7 of 2001 and June of 2010?

8 A. I mean 2009. I'm sorry.

9 Q. Okay. 2009.

10 A. Yeah. Sorry.

11 Q. What happened during that eight-year time
12 period? What I'm wondering is why wasn't your case called
13 to trial for eight years? That's what I --

14 A. I wondering that, too, because I've been
15 arrested before 2009 in New York.

16 Q. But were you out on bond? What happened during
17 that time period?

18 A. I had a minor incident in New York, but there
19 wasn't -- nobody told me that I had any arrest warrant in
20 no other state until '09.

21 Q. So in '09 you found out that they were pursuing
22 charges in South Carolina?

23 A. Yes.

24 Q. What did you do at that point? Were you sent
25 back to South Carolina?

Craig Gathers
Direct Examination by Mr. Shaffer
August 29, 2014

1 A. I was in New York and they came and extradited
2 me to South Carolina.

3 Q. So they send you back to South Carolina. Were
4 you appointed an attorney?

5 A. Yeah, I was.

6 Q. How soon after getting back to South Carolina
7 were you appointed an attorney?

8 A. They supposed to gave me an attorney in like
9 October, because I had an interview for an attorney, but I
10 didn't see my attorney until December.

11 Q. And you met Mr. Fox; right?

12 A. Yes.

13 Q. And when you met Mr. Fox, what did y'all discuss
14 about the -- did he discuss with you the evidence in this
15 case against you?

16 A. At first we sat down and he told me what was
17 going on. And he read me a written statement from the
18 victim, and I asked for a copy but I never received it
19 until four days till trial.

20 Q. Did he tell you about your ex-girlfriend making
21 a statement?

22 A. No.

23 He didn't tell me who was going to be a witness
24 against me at all.

25 Q. When did you find out that she was going to

Craig Gathers
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August 29, 2014

1 testify against you?

2 A. When she showed up at court.

3 Q. So it's safe to say that you didn't know
4 everything that was going to happen at court?

5 A. No. He only saw me two times before trial.

6 Q. And how -- on those two times, he did go over
7 some of the evidence against you; right?

8 A. Never.

9 Q. Did he go over any plea offers that were made?

10 A. No. I got a plea offer in my Rule 5 but the
11 date was past due when I got it, even though I wasn't
12 going to accept a plea. But still --

13 Q. You weren't going to accept it; right?

14 A. No.

15 Q. And you weren't going to accept it why?

16 A. Because I didn't do anything.

17 Q. What was the plea offer for that you were not
18 going to accept?

19 A. It said twelve years.

20 Q. Okay. But you ended up going ahead and going to
21 trial; right?

22 A. Yes.

23 Q. Did you tell Mr. Fox about any witnesses that
24 you wanted present at that trial?

25 A. Yes.

Craig Gathers
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1 Q. What witnesses did you want present at that
2 trial?

3 A. I wanted Alman -- I mean, Ruby Alman.

4 Q. And explain who Ruby Alman is.

5 A. She's the mother of Betty McCray. That's the
6 woman's house we went to the night of.

7 Q. And why did you want her present at the trial?

8 A. Because the victim claimed he got out of the cab
9 to go knock on her door. But I got out the cab. And then
10 he claimed that no one was home. The lady opened her door
11 and talked to me. She told me her daughter wasn't there,
12 a And I got back in the cab.

13 Q. So you admit to riding with that cab driver; is
14 that right?

15 A. Yes, I admit to taking the cab drive -- the
16 ride, yes.

17 Q. When you were in the cab, did you put a gun to
18 his head?

19 A. No.

20 Q. Did you ever threaten him in any way?

21 A. No.

22 Q. Did you even have a gun on you?

23 A. I don't own no gun. No, I didn't have no gun.

24 Q. And you ended up -- did you have any other
25 witnesses that you wanted to bring to court?

Craig Gathers
Direct Examination by Mr. Shaffer
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1 A. Yes. My aunt that I was living with at the time
2 and living in her house at the time, because she could
3 verify the times that I was home against the time that he
4 said I called her.

5 Q. So he could have -- she could have verified you
6 were home during part of that time?

7 A. Yes.

8 Q. Did she -- you know, had you talked to her? Did
9 she remember that that was around that time on that day
10 eight years beforehand?

11 A. No. I didn't never --

12 Q. Okay.

13 A. -- try to tell her what to say, because she
14 knows what time I come in her house, you know. So that
15 didn't need to be talked about.

16 Q. What did you think your defense was when you
17 went to trial?

18 A. There was no defense. The judge had asked me
19 three times would I -- am I going to testify, and my
20 lawyer never talked to me about testifying or not
21 testifying. He didn't put up no defense. He didn't -- I
22 told him to subpoena the telephone records to show that
23 what time that I called the cab company and he never did
24 that.

25 Q. So basically you weren't disputing that you were

Craig Gathers
Direct Examination by Mr. Shaffer
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1 in the cab, you were disputing that it happened?

2 A. Yeah. It's in the transcript.

3 I got up on the stand, after I was kind of
4 forced to, and I told my side of the story. I told them,
5 yes, I got in the cab.

6 Q. What do you mean you were forced to get on the
7 stand?

8 A. Because that man -- Mr. Fox didn't put no alibi
9 witness at the trial and he didn't have no type of
10 evidence to put into evidence.

11 Q. But just for a clarification: you're saying
12 alibi witness. You mean the witnesses that would have
13 said that the cab driver's time frame was not correct?

14 A. Yes.

15 Q. Did Mr. Fox ever talk to you about an alibi and
16 explain what that was?

17 A. No.

18 Q. Did he ever -- and you ended up testifying.
19 What did he -- did he tell you anything about whether or
20 not you were -- he was planning on having you testify?

21 A. Well, he said at the trial at the last moment
22 that if I do testify that they could bring out my past
23 criminal record and the State go last to closing argument.
24 That's all he told me.

25 Q. But he also asked you about what happened;

Craig Gathers
Direct Examination by Mr. Shaffer
August 29, 2014

1 right?

2 A. When I got on the stand. That's the only time.

3 Q. But in jail he never asked you what happened?

4 A. The first visit we went over it briefly. And he
5 already had the motion, so he already knew kind of what
6 the victim had said. But he got my part of the story at
7 that time.

8 Q. And you were saying he didn't give you discovery
9 until right before trial; right?

10 A. No. I wrote him before my motion but he left
11 out the victim statement and the crime-scene photos. I
12 didn't get that until four days to trial.

13 Q. Okay. So you said he left out the victim
14 statement and the crime-scene photos?

15 A. Yes.

16 Q. Okay. Did you ever see any police report that
17 indicated that your ex-girlfriend was going to be called
18 as a witness?

19 A. No.

20 Q. Had you known about your ex-girlfriend being
21 called as a witness before going to trial, do you think
22 you would have gone to trial?

23 A. Yes, I still would have went to trial.

24 MR. SHAFFER: Okay. No further questions.

25 THE COURT: Mr. Thomas?

Craig Gathers
Cross-Examination by Mr. Thomas
August 29, 2014

CROSS-EXAMINATION

BY MR. THOMAS:

Q. Mr. Gathers, just so we're clear. I don't think you mentioned this, but how many meetings did you say you had with Mr. Fox?

A. Two. It could have been three but that's the most. I could have wrote -- I have the dates.

Q. That's all right.

So you said he showed you these statements and these photographs, he just never gave you copies of them?

A. No, I did not say he showed me anything. He did not show me nothing.

Q. He never showed you anything?

A. No.

Q. But you did tell him about those people you wanted to come testify?

A. Yeah.

Q. And he explained to you why he wasn't going to call them to testify?

A. No. He explained that at trial when the judge was trying to tell me that it's up to him to have anybody take the stand in my behalf.

Q. So you're saying you went into trial thinking he was going to call those witnesses?

A. Yeah. Because I had told him every time I saw

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August 29, 2014

1 him. I even had my mother called him and -- because every
2 time I try to call him, his office tell me he's not in the
3 office.

4 Q. So but you did -- I mean, you do remember the
5 judge telling that whether or not you testified was your
6 decision?

7 A. Yes.

8 Q. And you had an opportunity to tell your side of
9 the story to the jury?

10 A. Yes.

11 MR. THOMAS: Thank you, Mr. Gathers.

12 THE COURT: Mr. Shaffer?

13 MR. SHAFFER: A couple of questions.

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Craig Gathers
Redirect Examination by Mr. Shaffer
August 29, 2014

REDIRECT EXAMINATION

BY MR. SHAFFER:

Q. You said that he told you about the statement of the victim, or read it to you, but he didn't actually give you a copy; is that right?

A. He promised to give me a copy but they didn't -- never did until the 17th of June.

Q. Which was right before the trial?

A. Yes.

MR. SHAFFER: Okay. No further questions.

THE COURT: Mr. Thomas?

MR. THOMAS: Nothing further, Your Honor.

THE COURT: You may step down. Thank you.

[Whereupon, Mr. Gathers is excused and exits the witness stand]

THE COURT: Any witnesses from the State?

MR. THOMAS: Nothing from the State, Your Honor.

THE COURT: Mr. Shaffer, you were unable to locate the aunt; is that correct? Just for the record.

MR. SHAFFER: That's correct, Your Honor.

THE COURT: I'll be happy to hear from you concerning -- well, I'll wait for your client to get there.

MR. SHAFFER: Your Honor, if I may, if the Court

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1 is inclined, I would actually like to be able to
2 submit a proposed order in this case essentially
3 outlining any grounds for post conviction relief. I
4 think that I can better formulate it in a more
5 coherent way that way.

6 THE COURT: All right. And so you're waiving
7 argument?

8 MR. SHAFFER: Yes, Your Honor, for this time, as
9 long as you will at least review the -- I'm sure you
10 will, Your Honor.

11 THE COURT: Mr. Thomas, do you have any
12 argument?

13 MR. THOMAS: If we're going to do proposed
14 orders, Your Honor, I would need to know exactly what
15 the allegations are going to be that I would need to
16 address in my proposed order. I'm assuming it's still
17 just failure to investigate and confrontation
18 violation.

19 MR. THOMAS: That's correct. I'm not going --
20 I'm not springing anything on him, but the --

21 THE COURT: You just would like some time to --
22 instead of making arguments that may not be fully
23 articulated at this time, you just wish to be able to
24 formulate your thoughts into a cohesive argument. Is
25 that what I'm hearing, Mr. Shaffer?

Craig Gathers
Redirect Examination by Mr. Shaffer
August 29, 2014

1 MR. SHAFFER: That's correct, Your Honor.

2 THE COURT: That's all he wants to do,

3 Mr. Thomas. Do you have any arguments here today?

4 MR. THOMAS: I'll just submit a proposed order,
5 Your Honor.

6 THE COURT: September 15th at 9:00 a.m. Is that
7 our consistent date, Mr. Thomas?

8 MR. THOMAS: That's correct, Your Honor.

9 THE COURT: All right.

10 Mr. Gathers, I'm going to accept proposed orders
11 to give your attorney -- and I'm giving him even
12 additional time than I typically do give, to September
13 15th. And so then, typically, within ten days I will
14 issue my ruling. So you should have a ruling within
15 thirty days of today's date. Good luck to you,
16 Mr. Gathers.

17 [HEARING CONCLUDES AT 9:10 A.M.]

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Craig Gathers
Redirect Examination by Mr. Shaffer
August 29, 2014

C E R T I F I C A T E

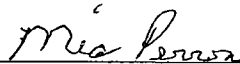
STATE OF SOUTH CAROLINA

COUNTY OF GEORGETOWN

I, the undersigned Mia Perron, Circuit Court Reporter for the 9th Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of the post conviction relief hearing held before the Honorable Kristi L. Harrington, on August 28th and 29th, 2014.

I do further certify that I am neither kin nor counsel to any of the parties and have no interest in the outcome of this action.

Dated this 17th day of January, 2015.



Mia Perron, CVR-CM-M
Circuit Court Reporter
9th Judicial Circuit

MIA PERRON, CVR-CM-M

STATE OF SOUTH CAROLINA)
COUNTY OF GEORGETOWN) IN THE COURT OF COMMON PLEAS
FOR THE FIFTEENTH JUDICIAL CIRCUIT

Craig Gathers, #341480,) Case No. 2013-CP-22-475

Applicant,)

v.)

State of South Carolina,)

Respondent.)

ORDER OF DISMISSAL

FILED
GEORGETOWN COUNTY, S.C.
2014 OCT 20 AM 10:45
ALMA Y. WHITE
CLERK OF COURT

This matter comes before the Court by way of an Application for Post-Conviction Relief filed May 2, 2013. Respondent made a timely Return on or about September 18, 2013. The Court convened an evidentiary hearing into the matter on August 28 and 29, 2014, at the Georgetown County Courthouse. Applicant was present at the hearing and represented by Tristan M. Shaffer, Esquire. Joshua L. Thomas, Esquire, of the South Carolina Attorney General's Office, represented Respondent.

Applicant testified on his own behalf at the evidentiary hearing. Applicant's trial counsel, Jonathan Eric Fox, Esquire, also testified. The Court had before it a copy of the trial transcript, the records of the Georgetown County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, and the return. The Court finds as follows:

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Georgetown County Clerk of Court. In January 2010, the Georgetown County Grand Jury indicted Applicant for kidnapping (2010-GS-22-172) and armed robbery (2010-GS-22-173). Jonathan Eric Fox, Esquire ("trial counsel"), represented Applicant. On June 21, 2010,

Applicant proceeded to trial before the Honorable Benjamin H. Culbertson and a jury. On June 23, 2010, the jury found Applicant guilty as indicted. On each charge, Judge Culbertson sentenced Applicant to concurrent terms of twenty-five (25) years in the State Department of Corrections with credit for time served.

Applicant filed a timely notice of appeal, and Elizabeth A. Franklin-Best, Esquire perfected the appeal. The South Carolina Court of Appeals affirmed Applicant's conviction on May 2, 2012. *State v. Geathers*, Op. No. 2012-UP-259 (S.C. Ct. App. filed May 2, 2012). The remittitur was returned to the circuit court on May 18, 2012.

II. ALLEGATIONS

In his application, Applicant alleged he is being held in custody unlawfully for the following reasons:

1. "Ineffective Assistance of Counsel"
2. "5th Amendment violations: Due Process Clause & Pre-indictment delay."
3. "6th Amendment violations: Right to Counsel & Compulsory Process."

At the evidentiary hearing, Applicant orally amended his application and proceeded only on allegations of ineffective assistance of trial counsel in the following regards:

1. Failure to object to a violation of the Confrontation Clause.
2. Failure to investigate.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Court has reviewed the record in its entirety and has heard the testimony and arguments presented at the evidentiary hearing. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

A. Summary of Testimony

Trial counsel testified he was appointed to Applicant's case in 2009. He testified the State's

evidence was largely based on the testimony of the victim. Trial counsel recalled reviewing the evidence with Applicant, and believed they had enough meetings to be prepared for trial. He testified Applicant never denied being in the cab, but said he did not have a gun and did not rob the victim. Trial counsel recalled Applicant giving him names of three witnesses to investigate: Irma Scarborough, Bryant Vereen, and Ruby Allman. Trial counsel testified his investigation largely consisted of locating and interviewing these witnesses. Scarborough was the aunt Applicant lived with while in South Carolina. Trial counsel recalled speaking to her, but she could not remember any details of the night of the crime. Vereen was Applicant's cousin, and trial counsel recalled Vereen stated he was living in North Carolina at the time of the crime and would not have seen Applicant. Trial counsel recalled neither his investigator nor the Berkeley County Sheriff's Department were able to locate Allman to subpoena her. He testified he likely would not have called Allman as a witness because she was hostile to Applicant after he ended his relationship with her daughter.

Trial counsel recalled his trial strategy was not to establish an alibi because Applicant admitted to being in the cab that night. Instead, he attempted to discredit the victim as lying to hide the fact he was working "off the books" the night of the crime. Regardless, he researched issues relating to the photo array and challenged the victim's identification. Trial counsel testified he did not object to the police officer relaying Allman's statements because they were statements demonstrating the officer's investigation.

Applicant testified he lived in New York City, but was visiting family in South Carolina at the time of the crime. He testified he broke up with his girlfriend shortly before the crime, and was traveling to her house that night to take her a gift. He recalled meeting with trial counsel two (2) to three (3) times and reviewing the victim's statements. Applicant testified he told trial counsel to call Allman

as a witness to prove he came to her house the night of the crime. Applicant also testified he did not know the witnesses he requested would not be called until the day of trial. He further testified trial counsel never explained to him why the witnesses were not called.

B. Ineffective Assistance of Trial Counsel

In a post-conviction relief action, the applicant bears the burden of proving the allegations in his application. *Butler v. State*, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (citing *Griffin v. Martin*, 278 S.C. 620, 300 S.E.2d 482 (1983)). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." *Id.* at 442, 334 S.E.2d at 814 (citing *Strickland v. Washington*, 466 U.S. 668 (1984)).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. *Id.* (citing *Strickland*, 466 U.S. at 687; *Turner v. Bass*, 753 F.2d 342 (4th Cir. 1985); *Marzullo v. Maryland*, 561 F.2d 540 (4th Cir. 1977)). Courts presume counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. *Id.* (citing *Strickland*, 466 U.S. at 690). The applicant must overcome this presumption in order to receive relief. *Cherry v. State*, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. *Id.* at 117, 386 S.E.2d at 625. First, the applicant must prove counsel's performance was deficient. *Id.* Under this prong, courts measure an attorney's performance by its "reasonableness under prevailing professional norms." *Id.* (citing *Strickland*, 466 U.S. at 688). Second, any deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's

unprofessional errors, the result of the proceeding would have been different." *Id.* at 117-18, 386 S.E.2d at 625.

1. Failure to Object to a Violation of the Confrontation Clause.

The Court finds Applicant failed to meet his burden to show trial counsel ineffective for failing to object to the introduction of Allman's statements through the police officer as a violation of the Confrontation Clause. The Confrontation Clause provides that "[i]n all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him." U.S. Const. amend. VI. This procedural safeguard is also applicable to state prosecutions. *Crawford v. Washington*, 541 U.S. 36, 42 (2004). The Confrontation Clause prohibits the admission of testimonial statements of a witness who does not appear at trial unless the defendant had a prior opportunity for cross-examination. *Id.* at 53-54. The Confrontation Clause does not prohibit the use of testimonial statements for non-hearsay purposes. *Id.* at 60 n.9 ("The Clause also does not bar the use of testimonial statements for purposes other than establishing the truth of the matter asserted." (citing *Tennessee v. Street*, 471 U.S. 409 (1985))).

No Confrontation Clause violation occurred here because Allman's statements were not offered for the truth of the matter asserted. In *State v. Thompson*, 352 S.C. 552, 558, 575 S.E.2d 77, 81 (Ct. App. 2003), the Court of Appeals held that statements are not hearsay when "offered for the purpose of explaining why a government investigation was undertaken." There, the trial court admitted a statement from a bystander that a suspect driving in a stolen car could be found in a certain home. *Thompson*, 352 S.C. at 556, 575 S.E.2d at 79. The defendant objected to the statements as hearsay because the bystander directly implicated the defendant as the driver of the victim's car. *Id.* at 557, 575 S.E.2d at 80. The Court of Appeals held the statements "were not entered for their truth but rather to explain and

outline the officers' investigation and their reasons for going to the [defendant's] home." *Id.* at 559, 575 S.E.2d at 81.

Allman's statements here were not offered to prove Applicant was the individual who committed the crime. Allman's statements identify the owner of the house Applicant visited and his relationship with the owner. These statements are intended to demonstrate why the officer began to investigate Applicant as a suspect. Because the statements simply explain and outline the officer's investigation, they are not hearsay. *Id.* Accordingly, the Court finds trial counsel articulated a valid reason for not objecting to the officer's testimony. *See Stokes v. State*, 308 S.C. 546, 548, 419 S.E.2d 778, 779 (1992) ("Where, as here, counsel articulates a valid reason for employing certain strategy, such conduct will not be deemed ineffective assistance of counsel." (citing *Whitehead v. State*, 308 S.C. 119, 417 S.E.2d 529 (1992))). Furthermore, because the testimony was not hearsay, it was not objectionable as a violation of the Confrontation Clause. *Crawford*, 541 U.S. at 60 n. 9; *see also State v. Cyrus*, 2011-1175, p. 23 (La. App. 4 Cir. 7/5/12); 97 So. 3d 554, 567 (finding that a detective's testimony "that an unnamed witness identified defendant as the individual seen exiting [the victim's car] was not offered for the truth of the matter asserted, but to explain the course of [the detective's] investigation[,] and was thus not hearsay and not prohibited by the Confrontation Clause). Trial counsel was not deficient in failing to object to the testimony on that ground.

Applicant has not shown the admission of the testimony was prejudicial. *State v. Davis*, 371 S.C. 170, 181, 638 S.E.2d 57, 63 (2006) (Confrontation Clause violations subject to harmless error analysis (citing *State v. Graham*, 314 S.C. 383, 444 S.E.2d 525 (1994); *State v. Mitchell*, 286 S.C. 572, 336 S.E.2d 150 (1985))). Allman's statement was simply that her daughter lived in her house and was in a previous relationship with Applicant. Applicant did not deny he was in a previous relationship with

Allman's daughter. Nor did he deny he was in the victim's cab and traveled to Allman's house the night of the crime. He also testified to the fact his ex-girlfriend lived in Allman's house. None of the information in Allman's statement contradicts Applicant's defense theory. It also has no bearing on the truth of the victim's accusations. In light of the whole record, Allman's statement could not have affected the outcome of Applicant's trial.

2. Failure to Investigate.

The Court finds Applicant failed to carry his burden to prove trial counsel ineffective for failing to investigate his case. Failure to conduct an independent investigation is not *per se* ineffective assistance of counsel, especially where an investigation would not have uncovered any helpful information. See *Moorehead v. State*, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998). Trial counsel reviewed the State's evidence and shared it with Applicant. Trial counsel interviewed two (2) of the witnesses Applicant requested he interview. Trial counsel employed the services of an investigator and the Berkeley County Sheriff's Office to locate the third witness, Allman, but was unsuccessful. The Court also notes trial counsel had reservation about calling Allman as a witness based on her daughter's relationship with Applicant. *Stokes*, 308 S.C. at 548, 419 S.E.2d at 779. The Court finds trial counsel's actions reasonable under the circumstances. The Court finds trial counsel conducted a proper investigation, adequately conferred with Applicant, and was thoroughly competent in his representation.

Applicant has presented no evidence of what information would have been uncovered had trial counsel conducted a further investigation. At the evidentiary hearing, Applicant also did not present any of the witnesses he alleged trial counsel should have called at trial. *Dempsey v. State*, 363 S.C. 365, 369, 610 S.E.2d 812, 814 (2005) ("A PCR applicant cannot show that he was prejudiced by counsel's failure to call a favorable witness to testify at trial if that witness does not later testify at the PCR hearing

or otherwise offer testimony within the rules of evidence.” (citing *Glover v. State*, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995))). The Court finds Applicant has not shown how he was prejudiced by the extent of trial counsel’s investigation.

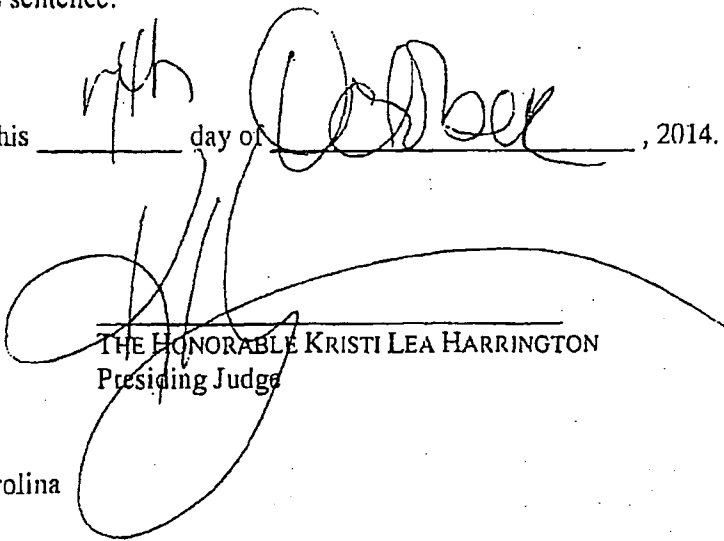
IV. CONCLUSION

Based on the foregoing, the Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. This application for post-conviction relief is denied and dismissed with prejudice.

IT IS THEREFORE ORDERED THAT:

1. The Application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. Applicant must be remanded to the custody of the Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 17th day of October, 2014.



THE HONORABLE KRISTI LEA HARRINGTON
Presiding Judge



Charles, South Carolina

AXELROD

ATTORNEYS AT LAW

4701 Oleander Drive ♦ Myrtle Beach, SC 29577

G.C.C.

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WITNESSES

Georgetown County Sheriff's Office

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DOCKET NO. 2010-GS-22-00173 +

The State of South Carolina

County of Georgetown

Nancy G. Cole 09G00998

COURT OF GENERAL SESSIONS

JANUARY, 2010 TERM

ARREST WARRANT NUMBER

G574799

CDR: 0139 \$16-11-0330(A)

DOI: August 5, 2001

THE STATE

VS.

CRAIG GEATHERS

N. Charleston, SC 29406

DOB:

SSN:

B/M

ACTION OF GRAND JURY

ATTORNEY: Fox, J. Eric

Indictment for

David Ward

Person of Grand Jury

Date: 1-15-10

VERDICT

GUILTY

ARMED ROBBERY

2K Bitts

Foreperson of Petit Jury

Date: 6/23/10

J. Gregory Hembree, Solicitor

STATE OF SOUTH CAROLINA)
)
COUNTY OF GEORGETOWN)

INDICTMENT

At a Court of General Sessions, convened on January 15, 2010, the Grand Jurors of Georgetown County present upon their oath:

ARMED ROBBERY

CDR: 0139 §16-11-0330(A)

That Craig Geathers did in Georgetown County on or about August 5, 2001, while armed with a deadly weapon, to wit: a pistol, take and carry away personal property of Harold King from or in the immediate presence of Harold King with intent to deprive Harold King of possession by use of force, threats or intimidation, in violation of Section 16-11-0330(A), S. C. Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


J. GREGORY HEMBREE NGC
FIFTEENTH CIRCUIT SOLICITOR

WITNESSES

Georgetown County Sheriff's Office

31

DOCKET NO. 2010-GS-22-00172⁺ ✓

The State of South Carolina

County of Georgetown

Nancy G. Cote 09G00998

COURT OF GENERAL SESSIONS

JANUARY, 2010 TERM

REST WARRANT NUMBER

G574800

CDR: 0095 \$16-03-0910

DOI: August 5, 2001

THE STATE

VS.

CRAIG GEATHERS

N. Charleston, SC 29406

DOB: [REDACTED]

SSN: [REDACTED]

B/M

ACTION OF GRAND JURY

TRUE BILL

ATTORNEY: Fox, J. Eric

Indictment for

Person of Grand Jury

Date: 1-15-10

VERDICT

GUILTY

KIDNAPPING

J. Gregory Hembree, Solicitor

Foreperson of Petit Jury

Date: 6/23/10

STATE OF SOUTH CAROLINA)
)
COUNTY OF GEORGETOWN)

INDICTMENT

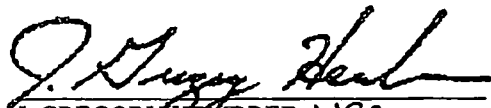
At a Court of General Sessions, convened on January 15, 2010, the Grand Jurors of Georgetown County present upon their oath:

KIDNAPPING

CDR: 0095 §16-03-0910

That Craig Geathers did in Georgetown County on or about August 5, 2001, unlawfully seize, confine, inveigle, decoy, kidnap, abduct or carry away one Harold King, without authority of law, in violation of Section 16-03-0910, S. C. Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


J. GREGORY HEMBREE NQC
FIFTEENTH CIRCUIT SOLICITOR